CORD
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No. 15-1262

In the
Supreme Court of the United States

PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and A. GRANT WHITNEY, JR., in his capacity as Chairman of the North Carolina State Board of Elections,

Appellants,

v.

DAVID HARRIS and CHRISTINE BOWSER,

Appellees.

On Appeal from the United States District Court for the Middle District of North Carolina

JOINT APPENDIX VOLUME II

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[1] IN THE UNITED STATES DISTRICT COURT OR THE MIDDLE DISTRICT OF NORTH CAROLINA DURHAM DIVISION

Civil Action No. 1:13-CV-00949

DAVID HARRIS; CHRISTINE BOWSER; AND SAMUEL LOVE,

Plaintiffs;

v

PATRICK MCCRORY, in his capacity as Governor of North Carolina; NORTH CAROLINA STATE BOARD OF ELECTIONS; and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections,

Defendants.

DEPOSITION OF THOMAS B. HOFELLER, PH.D.

APPEARANCES:

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Caroline P. Mackie, Esquire, appearing

Edwin M. Speas, Jr., Esquire, appearing.

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Alexander McC. Peters, appearing.

In Attendance: Dalton Oldham

At Raleigh, North Carolina. Tuesday, May 6, 2014.

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[3] The following deposition of THOMAS B. HOFELLER, PH.D., called as a witness by the Plaintiffs, was taken before Glenda F. Hightower, Certified Verbatim Reporter and Notary Public, at the law offices of Ogletree, Deakins, Nash, Smoak and Stewart, 4208 Six Forks Road, Suite 1100, Raleigh,

North Carolina on Tuesday, May 6, 2014 beginning at 9:06 a.m.

STIPULATIONS

Prior to the taking of the testimony, counsel for the respective parties stipulate and agree as follows:

1. That the deposition shall be taken and used as permitted by the applicable Federal Rules of Civil Procedure.

2. That any objections of any party hereto as to the notice of the taking of the deposition or as to time or place thereof, or as to the competency of the person before whom the same shall be taken, are deemed to have been met.

3. Objections to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before any judge of competent jurisdiction for the purpose of ruling thereon, or at any other hearing of said case at which said deposition might be used, except that an objection as to the form of a question must be made [4] at the time such question is asked, or objection is waived as to the form of the question.

4. That the witness reserves the right to read and sign the deposition prior to filing.

5. That the original transcript of this deposition shall be mailed Priority Mail Postage to the party taking the deposition for preservation and delivery to the Court.

[5] Whereupon,

THOMAS B. HOFELLER, PH.D.,

Having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Speas:

Q. Would you state your name for the record?

A. Thomas Brooks Hofeller.

Q. Okay. We've met before, I believe, Dr. Hofeller, at various times.

A. Several times.

Q. Yes, we have, and thank you for coming today. I want to talk with you a little bit this morning about your expert report filed in this matter.

MR. SPEAS: And if we could, let's go ahead and mark it as Exhibit 1. I guess this the first exhibit in this case.

MR. FARR: I'm not sure. Michael had the exhibits and –

MR. O'HALE: I think it might be up to eight by now.

MR. SPEAS: Oh, okay. So, let's –

MR. FARR: Can we go off the record for a second?

(DISCUSSION OFF RECORD.)

[6] (Plaintiffs' Exhibit 8, Marked for Identification.)

Q. (Mr. Speas) Dr. Hofeller, Exhibit 8 has been placed in front of you. And I would ask you whether or not you can identify Exhibit 8 as the expert report that you have filed in this case, Harris -v- McCrory?

A. I can.

Q. And is that your report?

A. It is.

Q. Okay. I want to ask you a few questions about your circumstances that brought you here. You have been retained in this case by whom?

A. I've been retained by the law firm.

Q. Of Ogletree Deakins?

A. Yes.

Q. Okay. And when were you retained?

A. I can't remember the last date, but I – I really can't remember when I was retained.

Q. Okay.

A. It's been – I've been with this case through – this line of cases through the whole redistricting cycle.

Q. You were retained by the Ogletree firm in the State Court redistricting litigation, [7] correct?

A. Yes.

Q. And this, of course, is a separate federal lawsuit. Were you separately retained in this suit, or is your work here simply a continuation of your State Court work?

A. No, I – as far as I understand, at this point I'm through with the State case, and this is a new case.

Q. And your expert report is dated January 17, 2014, is that correct?

A. Yes.

Q. So, you were retained some time prior to January 17th?

A. Yes.

Q. Can you estimate how long before January 17?

A. I imagine it would have been in November or December.

Q. Okay. And for what purpose were you retained?

A. I was retained to give expert testimony; and, of course, I expected to give some factual testimony too.

Q. Okay. And your retainer is for $295 an [8] hour?

A. That is my fee, yes.

Q. Okay. And –

A. Plus expenses.

Q. Right. And how much have you been paid so far?

A. I'm not exactly sure, but I think it's been somewhere in the neighborhood of about 16K – 12 to $16,000.

Q. Okay. And have you been paid for all the services you have provided to this point?

A. Except for this deposition, yes.

Q. Okay. Now, in preparing Exhibit 8, other than the attorneys at Ogletree, with whom did you confer; or from whom did you receive assistance?

A. I wrote this, myself; and made the inquiries, and examinations and analyses, myself.

Q. Okay. So, you did not confer with anyone other than the attorneys in preparing this report?

A. Not to my recollection, no.

Q. All right. And no other person assisted you in preparing this report?

[9] A. No.

Q. Okay. A little bit of background: I know a lot about your background, but you have a Ph.D. from Claremont Graduate University, correct?

A. I do.

Q. And I believe you received that in 1970 or thereabouts?

A. No, that's not correct.

Q. Oh, okay. When did you receive that?

A. 1980.

Q. Okay. And what was your dissertation topic?

A. Mississippi redistricting.

Q. Okay. Now, since receiving your Ph.D., have you ever been employed at the University as a faculty member?

A. No.

Q. Okay. Since receiving your Ph.D., have you been the sole author of any article in any academic journal?

A. No.

Q. Is it correct that you have been a consultant for the RNC or other Republican organizations continuously since the 1900s – [10] 1990s?

MR. FARR: The 1900s might be right. MR. SPEAS: That may be correct.

MR. FARR: I'll let Tom answer that.

A. No.

Q. (Mr. Speas) Would you describe for me the periods during which you have been a consultant for the Republican National Committee?

A. You said during the '90s?

Q. Yes.

A. I'd have to – I'd have to go back and look at my resume because I'm not sure. I left the employment of the National Republican Congressional Committee after the '90 redistricting. And then I was not employed by any committee, and then in 1999, I believe I was employed by the Republican National Committee through 2003.

And then I was employed in the Federal Government from 2003 through the beginning of 2009; and then, I believe, in May of 2009, I was retained by the Republican National Committee as a consultant.

Q. Would it be accurate, Dr. Hofeller, that [11] you have been a consultant with the Republican National Committee for the 1990 redistricting cycle, the 2000 redistricting cycle and the 2010 redistricting cycle?

A. No.

Q. Okay.

A. I was – I was retained for the – the 1990 redistricting cycle by the National Republican Congressional Committee. It's a separate entity.

Q. Okay.

A. And then -- well, I'll finish your question – then the RNC for the subsequent two.

Q. Okay. Thank you for that clarification. Describe for me the fields in which you believe you are an expert.

A. I believe I'm an expert in the field of – well, all fields really pertaining redistricting, to demographics, to political data analysis, to redistricting; statistical

analysis. I don't think there are any others that are really relevant to that.

Q. Okay. You're presently employed at an organization called Geographic Strategies, correct?

[12] A. I'm a partner.

Q. Okay. And Mr. Dale Oldham is your partner in that enterprise?

A. He is.

Q. Okay. And when was Geographic Strategies formed?

A. My recollection is it was in May of 2011. Again, I'd have to look at my resume though.

Q. Okay. And are there other partners at Geographic Strategies other than you and Mr. Oldham?

A. No.

Q. And Mr. Oldham is here today?

A. He is.

Q. Did you confer with Mr. Oldham in advance about your expert report in this case?

A. In his capacity as my attorney, we discuss a whole range of redistricting issues almost constantly.

Q. Is Mr. Oldham your attorney in this matter along with Mr. Farr?

A. I'm retained by Mr. Farr. Dale is my attorney.

Q. All right. Dr. Hofeller, in paragraph 17 of Exhibit 8, you say you have been asked to [13] evaluate the "Export" – I think that must be a typo – Expert Report submitted by Dr. Stephen Ansolabehere on behalf of the Plaintiffs.

A. I'm sorry. Could you give me the page number again?

MR. FARR: Page 5.

Q. (Mr. Speas) It's paragraph 17, page 5.

A. Okay.

MR. FARR: And thank you, Eddie, for pronouncing that name. I'm sure I'm not going to be able to do that.

MR. SPEAS: And I have tried, and I think I've got it down, but there's some question about that.

A. The "e" is silent.

Q. (Mr. Speas) Okay. You were asked to evaluate this expert report, correct?

A. I was.

Q. Okay. And which fields of your expertise did you use in evaluating this report, Exhibit 8?

A. Demographics, redistricting, political analysis; statistical analysis.

Q. Okay. Have you been asked to conduct [14] any other analyses for this case?

A. Not at this time, no.

Q. Okay. Do you expect to be asked to conduct other analyses for this case?

A. Possibly.

Q. Okay. All right.

MR. SPEAS: Now, let me ask the court reporter to mark this as Exhibit 9.

(Plaintiffs' Exhibit 9 Marked for Identification.)

Q. (Mr. Speas) What the court reporter has placed in front of you is Exhibit 9, the Expert Report of Stephen Ansolabehere. Do you recognize that report – that exhibit?

A. I do.

Q. Okay. And that is the report that you analyzed for Mr. Farr?

A. I did.

Q. Okay. Now, let me ask you this: this report, Exhibit 9, includes Tables 1 through 11, correct?

A. (Witness peruses document.) Yes.

Q. Okay. Is there anything – is any of the data in Tables 1 through 11 inaccurate in your judgement?

[15] A. (Witness peruses document.) Not that I recall, no.

Q. Okay. And Exhibit 9 also includes Maps 1 through 8. Have you examined those maps?

A. (Witness peruses document.) Yes, I did look at them.

Q. Okay.

A. They're not very clear on this document.

Q. Okay. But are those – do those maps accurately depict what they purport to depict?

A. Yes.

Q. Okay. Now, in examining Exhibit 9, did you reach any conclusion with respect to the appropriateness of the methodologies that Dr. Ansolabehere used in preparing his report?

A. Could you re-word that again? I'm sorry.

Q. Okay. Do you disagree with the methodologies that Dr. Ansolabehere used in preparing his report, Exhibit 9?

A. I don't disagree with the method he used. I do disagree with their – their efficacy in terms of his conclusions.

Q. Okay. You do not believe that the methodologies he used were not appropriate, do you?

[16] A. I think my answer is as I stated before.

I think he used – he used the methodol- – the methods, actually, correctly for what they are.

Q. Your disagreement is with Dr. Ansolabehere's conclusion, correct?

A. It is.

Q. Okay. All right. Not with his data?

A. No.

Q. And –

A. Well, yes, in the way – yes. This one – there's one thing that I would disagree with and –

Q. All right.

A. – that's his dependence upon registration data rather than election results, but as he used the – the registration data, he came out with the number he should come out with using that method.

Q. Okay. And the registration data he used was accurate data?

A. I – I will take him at face value on his data.

Q. All right. Okay. Now, Dr. Ansolabehere prepared a report in response to your report, is that correct?

[17] A. Yes, he did.

MR. SPEAS: And I'll ask the court reporter to mark this as Exhibit 10. (Plaintiffs' Exhibit 10 Marked for Identification.)

Q. (Mr. Speas) Is Exhibit 10 Dr. Ansolabehere's response to your report?

A. (Witness peruses document.) Yes.

Q. And have you reviewed that report?

A. I have.

Q. Okay. And when did you review the report?

A. I reviewed it when I received it from the attorneys, and I reviewed it before this deposition.

Q. Okay. And have you prepared any documents in response to Exhibit 10?

A. I have not.

Q. Okay. Did you conduct any analysis of any data as a consequence of reviewing Exhibit 10?

A. Any analysis of my own, are you asking?

Q. Yes.

A. No.

Q. Okay. And let me ask you if you contend [18] that any of the data used in Exhibit 10 is not accurate?

A. I accept the data that he has in his report.

Q. And do you believe that any of the methods Dr. Ansolabehere used in preparing Exhibit 10 are not appropriate for the purpose he used them?

A. Again, I would not agree that they are appropriate for the purposes of his conclusions. He – he preformed the analyses. He performed the analyses

correctly. I, once again, agree with his conclusions; and I also state that I'm still not agreeing with the fact that he relied heavily on registration figures and not on actual results; although he did use some election results this time.

Q. Okay. All right. Are you considering conducting any additional analysis in response to Exhibit 10?

A. Not unless asked.

Q. All right. Have you been asked?

A. No.

Q. Okay. Have you recommended to your counsel that any additional analysis be [19] conducted of Exhibit 10?

A. No.

Q. Now, Dr. Hofeller, let's talk a little bit about North Carolina and your work in North Carolina in 2011. In paragraph 29 of Exhibit 8 on page 9, you state that you were, quote, "intensely involved," close quotes, in the redistricting process in North Carolina.

Is that correct?

A. I'm sorry? What paragraph, please?

Q. Paragraph 29, page 9.

A. (Witness peruses page.)

Q. And in the last sentence, you say you were "intensely involved in the entire process."

A. I'm sorry? The paragraph number again?

MR. FARR: 29.

Q. (Mr. Speas) 29.

MR. FARR: It's the last sentence in 29, I think.

A. Oh, yes. I'm sorry. Yes.

Q. (Mr. Speas) Okay. And is that an accurate description of your role in the redistricting process?

A. Yes.

Q. Okay. Now, I want to talk to you a [20] little bit about the kinds of involvement you had. Did you draw the Congressional plans?

A. I was the person who drew most of the plans, and finalized the plans and kept track of the plans. It was the same role that I explained to you in the last case we were in. My primary thing was to advise, to keep track of the plans, to draft plans; to be the gatekeeper to make sure everything got done.

Q. And in the prior case, you described yourself as the principal architect of the Legislative plans. Would you describe yourself as the principal architect of the Congressional plan as well?

MR. FARR: Objection.

A. I would. I'm sorry.

MR. FARR: That's fine.

Q. (Mr. Speas) Okay. Now –

A. I would amplify that by saying, of course, as was the case in the Legislative map, the decision – principal decision-makers in the Congressional map as well as the Legislative map were the chairmen of the two committees.

Q. Senator Rucho and Representative Lewis?

[21] A. That's correct.

Q. And you answered to Senator Rucho and Representative Lewis in drawing the Congressional plan, correct?

A. I did.

Q. Okay. And did you make recommendations to them with regard to the goals that should be achieved by the plan?

A. Actually, they pretty clearly stated to me the goals that they wished to achieve by the plan.

Q. Okay. And did they state those goals to you in writing?

A. Not directly, no.

Q. Okay. Did they state those goals to youin an email?

A. No.

Q. Okay. Did they state those goals to you by conversation?

A. Yes.

Q. And was Mr. Oldham present at those conversations?

A. Not at all times, no.

Q. Okay. Was Mr. Farr present at those conversations?

[22] A. Not at all times, no.

Q. Okay. Did you make any recommendation to Senator Rucho and Representative Lewis with regard the requirements of the Voting Rights Act in drawing the Congressional plan?

A. Representative Lewis and Senator Rucho stated to me that the maps should be drawn in such a way as

to pass muster under both Section 2 and Section 5, and they knew what that entailed.

Q. Okay. And what did that entail? What did you understand that entailed?

A. With regard to the Congressional plan, it – that – that District 1 was a Voting Rights district, and that District 12 was not a Voting Rights district. It was a political district.

Q. Okay. And with regard to District 1, did you recommend to them, Senator Rucho and Representative Lewis, that that district had to be drawn with more than a 50 percent BVAP?

A. I was instructed by them that the district should be drawn with a African-American percentage in excess of 50 percent total VAP.

Q. Okay. Did you receive a similar [23] instruction from them with regard to District 12?

A. No.

Q. Did you receive any instructions from Senator Rucho and Representative Lewis with regard to the partisan advantage that should be provided the Republicans in drawing the districts?

A. Yes.

Q. And what were those instructions?

A. My instructions were to draw the plan to make it – have an increased number of competitive districts for GOP candidates.

Q. And did you make any evaluation of the likely results – partisan results of the plan enacted by the General Assembly?

A. Yes.

Q. And what was that estimate?

A. That – that three of the districts were most certainly going to be strong Democratic districts, and that the remaining districts would be more competitive or remain competitive for Republican candidates.

Q. And those three strong Democratic districts were?

[24] A. One, 4 and 12.

Q. Okay. And what was the result of the 2012 election with regard to partisan advantage?

A. Four Democrats won election to the House of Representatives – U.S. House of Representatives, and the remainder were Republicans.

Q. Now, when you – as you were drawing the plans, did Senator Rucho and Representative Lewis give you any instructions as to whether partisan advantage or competitiveness was to take precedence over compliance with the Voting Rights Act as you drew the districts?

A. No.

Q. Okay. As you were drawing the districts, did you weigh partisan advantage more heavily than compliance with the Voting Rights Act?

A. For the plan as a whole?

Q. Yes.

A. For the plan as a whole, I would have to say, yes; but the plan was compliant with the Voting Rights Act. There were many, many – 12 of the 13 districts were drawn as political districts.

Q. As you were drawing Congressional [25] District 1, did you give precedence to compliance with

the Voting Rights Act over partisan advantage in constructing that district?

A. I would not say so, no.

Q. Okay.

A. It was a factor certainly, but it was not the predominant factor.

Q. Okay. What was the predominant factor?

A. Well, as you – as probably you don't know, when – when you're drawing a plan, of course, the plan is a whole plan – a whole map of the State. And so, every district plays into every other district, and the map which the Republicans inherit – inherited had districts which were not equal in population.

The entire reason you redistrict to begin with is to equalize the population. So, certainly equality of population was a preeminent factor.

Q. Okay.

A. Another factor was to rema- – to retain the cores of many of the districts. In fact, I think most of them retained their cores; and also to, again, shift the populations.

With regard to District 1, one – one of [26] the problems with District 1 was that it was underpopulated by, I believe, 97,600 people or something like that; and population would have to be added to the district. The new district would have to have 97,000 more people in it.

One of the other factors that concerned the – the Chairmen was that District 1 was the most underpopulated district in the previous plan, and we were trying to ameliorate that situation in the drafting of the new district so that the difference in population

between the – all the districts in the plan would – would stay smaller as the decade progressed.

Q. Okay.

A. The other thing was that the population needs of the surrounding districts had to be taken care of too. Once again, District 1 was not drawn in a vacuum. So, the populations had to be adjusted.

Q. Okay.

A. And, of course, the political goals of the General Assembly in the plan had to be taken into account too.

Q. Okay. Let me talk about District 12 for just a minute. When you were drawing District [27] 12, did partisan advantage take precedence over compliance with the Voting Rights Act?

A. Yes.

Q. Now, let me ask you this: when you began drawing the Congressional districts, did you start with the existing plan and modify it; or did you start from scratch?

A. In drawing almost any redistricting plan, particularly in a state for Congressional districts where the number of districts has not changed because of reapportionment, the – the normal starting point is always from the existing districts.

But once again, it's the whole map, and the needs of the whole map. So, we had areas where there was more population than needed, and we had areas where there was less population needed. So, all that had to be adjusted.

And, of course, so all the plans – all the maps, districts had to be shifted around in order to accommodate the goals of the whole plan.

Q. Okay. But you began with the existing plan?

[28] A. Yes.

Q. Okay. Now, did you draw the districts in any particular sequence; that is, did you focus first on District 1?

A. It was my instruction and it would have been the normal practice in any state I drew where we had Section 2 or Section 5 issues to pay particular attention from the beginning of the plan to a district that was covered.

Aside from that, an analysis, of course, had to be made about how the districts had to be shifted from one spot to another. And as is in the case of any plan drafting, you go through many iterations of the map before it even is made public.

Q. Unh-hunh (yes). Okay. So, it would be accurate that the first district you focused on was Congressional District 1?

MR. FARR: Objection to the form.

A. I really don't agree with your premise or your question there.

Q. (Mr. Speas) Okay.

A. It was always in my mind. I was focusing first on the – the nature of the whole plan – the holistic view of the plan, [29] and where the shifts needed to be and what had to be done in the whole plan.

And when you're doing that, you work your way back and forth across the map many times, tugging and pulling at districts, and looking at them, and other people are looking at them. And so, I would say your premise in that question is – is not – doesn't work for me.

Q. What does work for you is that District 1 was always in your mind?

A. It was in my mind when I was drawing it and the results of what would be there, but so were the other districts.

Q. Okay. But it was in the front of your mind, correct?

MR. FARR: Objection to the form.

A. It was always important to circle back if necessary, depending on where I was drawing, and see how all the pieces of all the districts pieced together. But once again, my instruction from the Chairmen was to draw a legal map that would qualify in a one person one vote, and that would qualify under the Voting Rights Act.

And then the political goals were going [30] to be taken into account; and, of course, there are always the needs and desires of incumbents, some of which are good ideas and some of which maybe aren't good ideas.

Q. (Mr. Speas) And when you circled back to Congressional District 1 as you were working on the rest of the map, did you circle back to make sure that it remained above 50 percent total black voting age population?

A. Again, my understanding and instructions were because of Strickland, if the district were to be drawn as a Voting Rights Act district, it had to be in excess of 50 percent, I would say, TVAP.

Q. Okay. I understand. Now, was – where was Congressional District 12 in your mind as you were drawing the whole plan? Was it just after Congressional District 1 or was it someplace else?

MR. FARR: Objection to the form.

A. Again, I – if you've ever drawn a plan, you would know that I was focusing from district to district to district and back and forth and forth and back. So, it wasn't a situation where I was saying, "Well, what does [31] this do to 12, or what does this do to 1?" Because, you may be working in an entirely different area of the State. The – the mission here was to create a legal plan first off, and to make sure that it would pass muster under the Voting Rights Act, both Section 5 and Section 2.

Q. (Mr. Speas) Okay.

A. So, if you've ever drawn a map, you would know that you're just – you're thinking of the task at hand, which is the district that you're drawing on.

Q. Okay.

MR. SPEAS: I'm going to ask the court reporter to mark this document as Exhibit 11.

(Plaintiffs' Exhibit 11 Marked for Identification.)

Q. (Mr. Speas) Dr. Hofeller, I would ask you to review Exhibit 11, and then ask you whether or not it is the public statement issued by Senator Rucho and Representative Lewis on July 1, 2011 regarding the 2011 Congressional Plan?

A. It's a true copy. It certainly is.

[32] Q. Okay. Did you assist in preparing that document?

A. I did not.

Q. Okay. Did you review the document before it was released?

A. I don't recollect whether I saw it before or after it was released.

Q. Did – to your memory, did Senator Rucho or Representative Lewis seek your advice in preparing this document?

A. They did not.

Q. Have you reviewed this document before?

A. Yes.

Q. Okay.

A. Before this –

Q. Before this deposition.

A. – deposition, yes.

Q. You have?

A. Yes.

Q. Okay. And does Exhibit 11 reflect the directions you received from Representative Lewis and Senator Rucho in drawing the Congressional plan.

MR. FARR: I think you should make sure you read the whole thing.

[33] A. Yes, I would – I would actually have to sit down and read it in really great detail to see if it correlates exactly. In general it does, yes.

Q. (Mr. Speas) All right. Well, let me call your attention to some specific parts of Exhibit 11. If you would look on page 2 at paragraph 1, was one of the instructions you received to use the current Congressional plan as a frame of reference?

A. I think by the time that this statement was written, it was clear that that had already been done.

Q. Okay. So, the plan you drew met this instruction; or, rather, let me put it this way: in drawing the plan, you used the current plan as the frame of reference?

MR. FARR: Objection to the form.

A. I don't understand what you mean by "frame of reference."

Q. (Mr. Speas) I'm using the term that Senator Rucho and Representative Lewis used.

MR. FARR: I think it says, "a frame of reference."

Q. (Mr. Speas) Did you understand what – [34] do you understand what they meant when they said, "Use of current congressional plan as a frame of reference"?

A. I would understand that it's the way we would start any plan. So, yes, it's – it's a frame of reference.

Q. Okay.

A. It's always a frame of reference in the districting.

Q. All right. And in drawing the plan, you used the 2001 plan as a frame of reference in accordance with –

A. Yes, as a frame.

Q. Okay.

A. Okay.

Q. Now, would you turn with me to page 3? And there is a sentence – paragraph midway that begins, "The State's First Congressional District was originally drawn in 1992 as a majority black district. It was established by the State to comply with Section 2 of the Voting Rights Act. Under the decision by the United States Supreme Court in Strickland v.

Bartlett, the State is now obligated to draw majority black districts with true majority [35] black voting age population."

Was that an instruction you received from Representative Lewis and Senator Rucho, that the State is obligated to draw majority black districts with true majority black voting age population?

A. Did you say districts?

Q. That's – I'm reading –

A. Could you just restate your question, please?

Q. Okay.

A. Thank you.

Q. In Exhibit 11, Senator Rucho and Representative Lewis state, quote, "The State is now obligated to draw majority black districts with true majority black voting age population."

Did you receive an instruction from Senator Rucho and Representative Lewis to draw majority black districts with a true majority black voting age population?

MR. FARR: Object to the form because you're quoting half the sentence.

Q. (Mr. Speas) Can you answer the question?

A. It was my understanding – and, again, [36] this has been three years. So, it was my understanding that if you were going to draw a Section 2 or Section 5 district, that because of Strickland, you had to draw it over 50 percent.

Q. Okay.

A. I understood that, yes.

Q. Okay. And that was an instruction you received from Rucho and Lewis?

A. Yes.

Q. Okay. Let's turn to page 5 of Exhibit 11 where the first of the page talks about the Twelfth District.

A. Yes.

Q. And I would call your attention, specifically, to the paragraph midway of that page which says, quote, "Because of the presence of Guilford County in the Twelfth District, we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District. We believe that this measure will ensure pre-clearance of the plan."

Did I read that accurately?

[37] A. You did.

Q. Okay. Did you receive an instruction from Representative Lewis and Senator Rucho to draw the Twelfth District at a black voting age level that is above the level – black voting age level in the current Twelfth District?

A. Actually, my understanding of the issue was because Guilford was a Section 5 county and because there was a substantial

African-American population in Guilford County, that if the portion of the African-American community was in the former District 13 – was a strong – which was a strong Democratic district was not attached to another strong Democratic district, that it could endanger the plan and make a challenge to the plan.

And that's where that concern generated from.

Q. Okay. And did that concern come from Senator Rucho and Representative Lewis or elsewhere?

A. It came from them.

Q. Okay. Now, let me call your attention now, Dr. Hofeller, to page 7 and in particular, paragraph 7 on page 7. Did you – in that [38] paragraph, Senator Rucho and Representative Lewis state, quote, "We have attempted to respect county lines and whole precincts when it was logical to do so and consistent with other relevant factors."

Did you receive an instruction from Representative Lewis and Senator Rucho to respect county lines when logical to do so?

A. Yes, and consistent with other relevant factors.

Q. Okay. And what were those other relevant factors as you understood them?

A. Well, my relative factors were to, again, draw a plan that was legal which fulfilled the Federal criteria of one person one vote, and which would pass muster under Section 2 and Section 5 of the Voting Rights Act; particularly, to get pre-cleared.

Q. Okay. So, if the Voting – compliance with the Voting Rights Act required the division of a county, you divided a county, correct?

MR. FARR: Objection to the form.

A. Once again, I have to state that the – the one Section 2 county – Section 2 district, [39] District 1, was not drawn in a vacuum. And so, in order to accomplish all of the goals in the drawing of Section (sic) 1 and all of the surrounding districts and the whole plan, it became necessary to split some precincts, and they were split.

Q. I'm not talking about split precincts right now. I'm talking about county splits.

A. Well, and counties also.

Q. Okay.

A. Yes.

Q. So, when was it logical to split a county as you were – when did you conclude it was logical to split a county when you were drawing the plan?

A. Well, certainly, if you could not make a – a legal district out of whole counties, you would have to split counties.

Q. Okay. And a legal district would be one that was required by Section 2?

A. Yes.

Q. And the Voting Rights Act?

A. I believe that's part of –

Q. Well, I guess it may be about all of it now.

[40] A. No, I don't think so, but I won't get into a legal discussion with you.

Q. Okay, okay.

A. I'll leave that to your fellow attorneys.

Q. Okay. When else was it logical to split a county?

A. Well, again, you might split a county – you have to, certainly, split counties in order to meet one person one vote. You might have to split counties to transition.

Q. Transition?

A. The plan.

Q. Transition –

A. From one place to another.

Q. Okay.

A. You might have to split precincts because of incumbencies.

Q. What about partisan advantage?

A. There might be a case of that, yes.

Q. Okay. Now, I'm focused on whole counties. Let me now talk about split precincts just a moment. You were instructed to attempt to respect precinct lines as you were drawing this plan?

A. Yes.

[41] Q. Okay. And there are occasions when you did split precincts, correct?

A. That's correct.

Q. And when was it logical in your estimate to split a precinct?

A. Well, again, it might be the same person – the same purpose for which we would split a county. It could be a transit. It could be an incumbency. It could be to equalize the populations. It could be in the case of the First to, again, comply with the Voting Rights Act and to comply with some of the input that we had from the public and from members on the plan.

Q. Okay. And, in fact, in Exhibit 11 on page 7 in paragraph 7, Senator Rucho and Representative Lewis state; and I quote, "Most of our precinct divisions were prompted by the creation of Congressman Butterfield's majority black First Congressional District or when precincts needed to be divided for compliance with the one person one vote," correct?

A. On what page?

Q. Page 7, paragraph 7.

A. Oh, okay. I'm sorry.

[42] Q. I was –

A. Page 7, 7?

Q. Yes, 7, 7, the last sentence.

A. That's true.

Q. Okay. And is that an accurate statement, that the – most of the precincts that were divided in the Congressional plan were divided in the creation of Congressman Butterfield's Congressional District 1 or one –

A. Yes.

Q. – person one vote?

A. Yes, yes.

Q. Okay.

A. Well, and once again, several other reasons.

Q. Okay.

MR. SPEAS: Now, let me ask the court reporter to mark Exhibit 12.

(Plaintiffs' Exhibit 12 Marked for Identification.)

Q. (Mr. Speas) Dr. Hofeller, I have placed in front of you a document bearing the letterhead of the North Carolina General Assembly and the title "Joint Statement of Senator Bob Rucho and Representative David [43] Lewis regarding the release of Rucho-Lewis Congress 2."

I would ask you if you have ever seen Exhibit 12 before?

A. I have.

Q. Okay. And did you assist Senator Rucho and Representative Lewis in preparing this document?

A. I did not.

Q. Did you review this document before it was released?

A. I did not.

Q. Did you have discussions – have you reviewed Exhibit 12 since it was published?

A. I have.

Q. Okay. And it does not bear a date, but let me just say for the record that the Legislative website reports that this document was published on July 19, 2011.

Let me ask you, Dr. Hofeller, to turn to page 4 of Exhibit 12. And I would call your attention specifically to the last paragraph, and I would – that paragraph says, "In adopting the Twelfth District, we intended to accommodate the wishes expressed to us by [44] Congressman Watt, as we understood them, to continue to include populations located in Mecklenburg, Guilford and Forsyth Counties.

"Our revised version of this district makes it more compact and continues the district as a very strong Democratic district. Our version of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 General Election."

Did I read that correctly?

A. You did.

Q. Okay. Let me first ask you about their statement that District 12 in the enacted plan is more compact than District 12 in the former plan?

A. I haven't reviewed that.

Q. You have not?

A. I can't answer that.

Q. Okay. What instructions did you receive from Senator Rucho and Representative Lewis about compactness in the Congressional plan -¬in drawing the Congressional plan?

A. I was – I don't remember actually receiving any specific instructions, except the generalized fact to make plans as compact as [45] possible with the goals and policies of the entire plan.

Q. Okay. And as you were drawing the plans, did you occasionally apply the mathematical measures of compactness to see how the districts were holding up?

A. No.

Q. Okay. And at the end of the process, did Senator Rucho and Representative Lewis ask you if the districts were compact in your judgement?

A. Not that I recall.

Q. Okay. And at the end of the process, did you on your own form any opinion as to whether the districts were compact?

A. Some were; some weren't.

Q. Did you form an opinion as to whether District 12 was compact?

A. My opinion on District 12 was that District 12's compactness was in line with former versions of

District 12 and in line with compactness as one would understand it in the context of North Carolina redistricting; and, indeed, in the context of redistricting across the country.

[46] Q. And on one occasion, you described a former version of Congressional District 12 as the least compact district you'd ever seen, didn't you?

MR. FARR: Objection to the form.

A. I – if I made that statement, you have some – I might have said it. It depends on when I made that statement. There's been a lot of districts, maybe, after that happened – there's been a lot of 'em this round that have been pretty extreme.

Q. (Mr. Speas) Do you recall making that statement with regard to the 1991 version of Congressional 12?

A. I don't recall making it, but I would not be at all surprised if I had made it. It's been a feature of PowerPoints by many, many, many different people.

Q. Okay. Now, as you completed the plan, did you form an opinion as to whether or not Congressional District 1 was compact?

A. Within the context, again, of North Carolina plans, I did not believe that the – that the new District 12 (sic) had a compactness issue.

[47] Q. Okay. Now, let me call your attention –

MR. FARR: Were you asking about 12 or 1?

MR. SPEAS: About 1.

MR. FARR: Well, he –

A. I'm sorry. I gave you a 12 answer, didn't I?

Q. (Mr. Speas) I'm sorry. You did.

MR. SPEAS: Thank you, Tom.

Q. (Mr. Speas) I was asking about District 1.

A. Again, within the context of the history of Congressional District 1, I certainly did not believe that there was an issue with the compactness of that district, again, in the North Carolina compactness.

Q. Did you form an opinion as to whether the 2011 version of Congressional 1 was more compact than earlier versions of Congressional 1?

A. I'm not really sure that that's a relevant comparison. I mean, the former plans were all drawn in a different context. In many cases, there were different numbers of districts, the distribution of the demographics, both [48] demographics racially and ethnically; and population levels were different in all the plans.

So, it's – it's very hard to compare one year to another because all the other factors weigh very heavily on how those districts are formed.

Q. So, would it be accurate then that you made no judgement with respect to whether the 2011 version of Congressional 1 was more compact than the 2001 version of Congressional 1?

A. Again, please restate that.

Q. You made no judgement at the end of the 2011 process regarding whether Congressional 1 in 2011 was more or less compact than the 2001 version of Congressional 1?

A. Again, I don't understand what you mean by "the end."

Q. Okay. I'm not sure how I can clear up my unclear question.

A. I mean, it's still going on, is it not?

Q. What's still going on?

A. The process. We're in court.

Q. Oh, we're in court?

[49] A. Okay.

Q. Did you make a decision in 2011 when Congressional District 1 was enacted as to whether it was more compact than the 2001 Congressional 1?

A. Again, as I stated previously, I didn't think that it was a relevant thing to do.

Q. Okay. All right, thank you.

A. Okay.

Q. Now, let me ask you about the next sentence on page 4 of Exhibit 12, which is, and I quote, "Our revision of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 General Election."

Did I read that correctly?

A. Again, I'm trying to find it.

Q. It's at the bo- – fourth line up from the bottom of page 4. "Our revision of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 General Election."

Did I read it correctly?

A. You did.

Q. Okay. Did you receive an instruction [50] from Senator Rucho and Representative Lewis to draw District 12 based on the 2008 Obama vote?

A. I think that was my decision.

Q. Okay. And did you –

A. And –

Q. Go ahead.

A. And there were many, many factors that played into the creation of District 12, and all of them were political. So, once again, I have to state that District 12 was not drawn in a vacuum. It was drawn in the context of the districts that immediately surrounded it and in the context of the whole State. So –

Q. Did –

A. But –

Q. Go ahead.

A. No, that's all right.

Q. Did you look at the Obama 2008 vote in deciding which districts – I'm sorry – which VTDs or census blocks to include in Congressional 12 or not include in Congressional 12?

A. You really asked – there are two parts to that question.

Q. Okay. Can you answer them?

[51] A. Okay. First of all, you don't have Obama vote by block.

Q. Okay.

A. So, it couldn't have been a factor in where the blocks were – where there were splits.

Q. Okay.

A. Secondly, it was certainly an important factor in the placement of the boundaries of the Twelfth District, but there were other political and demographic factors; and by that, I mean population factors that played into which precincts were put in the district as I have explained in previous reports.

Q. Okay. Did you use the Obama 2008 vote in deciding whether to put a VTD in District 12 or to put it outside District 12?

A. In many cases, yes.

Q. Okay.

A. Not exclusively.

Q. We'll get to that. And when you were deciding whether to put a district – a VTD in District 12 or not, did you look at the level of the Obama vote?

A. The percentage, yes.

[52] Q. Okay. And if the percentage were less than 50 percent for Obama, did you have a rule as to what you would do with the district -¬the VTD? I'm sorry.

A. I'm sorry. I'm trying to follow your question, but –

Q. Okay. As you were looking at the Obama vote, did you look at the percentage of the vote for Obama in deciding whether to put the VTD in District 12 or not?

A. In many cases, yes.

Q. Okay. And if the percentage vote for Obama were higher, more than 50 percent, was that a factor that led you to put the VTD in Congressional 12?

A. In some cases; in other cases, it was – there were other factors at play.

Q. Okay. In Exhibit 12, Senator Rucho and Representative Lewis state that the revision of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 General Election.

Do you know – do you have some understanding of what they meant when they said, "voted heavily for President Obama"?

[53] A. I think you'd really have to ask them what they thought they meant by it.

Q. Okay. Did you place districts in 12 or out of 12 based the heaviness of the Obama vote?

A. In many cases, yes.

Q. Okay. The higher the Obama vote, the more likely you would put the VTD in 12, correct?

A. Again, in most cases, yes.

Q. The lower the Obama vote, the more likely you would place the VTD outside District 12, correct?

A. I don't think that that's a fair conclusion to make. I mean, there are many factors, again, playing into the actual construction of District 12. It's a very complex district. And some of the precinct placements obviously were – actually, VTDs, I might use them interchangeably – were more mandated by holding the district together.

Q. Okay. It had to be contiguous?

A. That's now a requirement. It wasn't a requirement in past Congressional plans in the State.

Q. Okay. Now, did you inform Senator Rucho [54] and Representative Lewis that you were drawing 12 – the Twelfth District based on the whole precincts that voted heavily for President Obama?

A. My instructions were I was to create a heavily Democratic district.

Q. Okay.

A. And by creating a heavily Democratic district, Democratic voting strength would be withdrawn from the surrounding districts which would make the surrounding districts more competitive for Republicans.

Q. Okay.

A. Some of those districts had requirements that were different from other districts. So, it was a balancing act of the Twelfth in relationship to all the other surrounding districts, which would be my understanding of how it was drawn previously, too.

Q. And Senator Rucho and Representative Lewis did not disagree with the decision you made?

MR. FARR: Objection to the form.

Q. (Mr. Speas) They did not inform you that they disagreed with your decision?

[55] A. I think if you know Senator Rucho, you'd know that if he disagreed with something I did, I would know it.

Q. Okay. All right. Now, you – one of your areas of expertise is voting behavior, correct?

A. Yes.

Q. Okay. And you used your expertise in voting behavior in constructing the 2011 plan?

A. To some extent. Most of my voting behavior experience was – is with election targeting and such; but, again, the – there were certain partisan policy goals which the General Assembly wanted to fulfill in the construction of this map. And, certainly, my knowledge of political data and how it plays into the winning of elections is just internalized in my mind.

Q. Okay. Based on your past experience and your knowledge, did you count a vote for Obama as a vote for a black or a Democrat?

A. A Democrat.

Q. Okay. Did you use any other election results in putting VTDs in or outside of Congressional 12?

[56] A. I'm sorry? Did you say political –

Q. Did you use any elections other than the 2008 Obama election in putting districts in or outside –

A. I did not.

Q. Okay. You've draw a lot of plans.

A. Many, many plans.

Q. Many, many, many plans – hundreds probably, correct?

A. I don't know if it's hundreds, but a lot.

Q. In drawing other plans, have you ever placed a VTD in or outside a district based on the results of a single election?

A. Yes.

Q. And can you – have you ever done that – did you do that with any other North Carolina district, Congressional or –

A. I may have. You know, it's been a long time since this last process.

Q. Okay.

A. I think most people over-complicate these things.

Q. Okay. Do you recall any State legislative district you drew in 2011 that you used only the results of a single election in [57] putting VTDs in or outside the district?

A. In – in many cases as part of my general work, I would evaluate states and how they could be redistricted; and in many of those cases, I would use the presidential vote because the presidential vote is the most recent and in many states it might be the only 50/50 or near 50/50 contested election with full turnout and with the kinds of knowledge and communications in them.

And I think it's a – a very good thing to look at. Also, when you're comparing old districts to new districts, in some of those cases, I would use one election; and in other cases, I might use two or three elections.

Q. But to answer my question, do you recall any district you drew in either the State House or State Senate in 2011 in which you used the results of a single election in assigning a VTD to a district?

A. I'd have to think about that.

Q. Well, let me be more specific. Do you recall any other Congressional district other than 12 in which you used the results of the 2008 Obama election to assign a VTD to the [58] district or not?

A. Other than –

Q. Other than CD 12.

A. Yes, of course.

Q. Okay. Which ones?

A. I'm sorry. I – I was using the McCain/Obama vote across the State.

Q. Okay. In forming –

A. That's the way I understood your question.

Q. In forming Congressional 12 – I mean, the Congressional plan?

A. Yes.

Q. Okay. All right. Thank you.

A. I'm sorry. I thought I – you thought I

Q. I misunderstood.

A. Could I get a break here?

Q. Yes, absolutely.

(SHORT BREAK 10:20 - 10:25 A. M.)

Q. (Mr. Speas) Let me give my last set of questions one more try. Here's my question: when you were drawing the Congressional plan, did you use any election results other than the Obama 2000 (sic) election results in assigning VTDs to one district or another?

[59] A. Not that I can recall.

Q. Okay. In drawing the Legislative plans, the State House and the State Senate, do you – did you use election results other than the Obama 2008 election results in assigning VTDs to districts?

A. I don't really recall. I had a lot of advice from many, many people on that, and as you recall, the Legislative map draws itself to a very great extent.

MR. SPEAS: And let's mark as Exhibit 13 this next document.

(Plaintiffs' Exhibit 13 Marked for Identification.)

Q. (Mr. Speas) Dr. Hofeller, Exhibit 13, I would represent to you, was printed off of the Legislature's redistricting website; and I would ask you if you have seen that document before?

A. To be truthful, I don't recall that I have seen that document before. I certainly computed the same data. It would be probably one of the very first steps that you would look at. Even before you start drawing, people in states and in Washington, D.C. are looking at [60] the pluses and the minuses of all the districts.

Q. Okay. And this document simply reports the amount by which any district was – existing district – the 2001 district was over or under the ideal population for 2011 purposes, correct?

A. Yes.

Q. And this document reports that District 12 was overpopulated by 2,847 people?

A. Yes.

Q. And that District 1 was underpopulated by 97,563 people?

A. Yes.

Q. Okay. And the same numbers – the same result is reported for other districts?

A. True.

Q. Okay. Now, I want to show you Exhibit 14.

(Plaintiffs' Exhibit 14 Marked for Identification.)

Q. (Mr. Speas) Dr. Hofeller, I would report to you that Exhibit 14 is a collection of maps of District 12 as it appeared in Rucho-Lewis Congress 1, Rucho-Lewis Congress 2, Rucho-Lewis Congress 2A, and Rucho-Lewis [61] Congress 3.

Does this document appear to contain those districts – those versions of Congressional 12?

A. You know, I can't verify –

Q. Okay.

A. – with any high degree of certainty.

It looks right to me.

Q. Okay. My question is this: looking at

Exhibit 13 (sic), and based on your memory, is it correct –

MR. FARR: It's 14.

MR. SPEAS: Fourteen. I'm sorry.

Q. (Mr. Speas) Is it correct that Congressional District 12 did not change much, if at all, through the various iterations presented to the General Assembly; Rucho-Lewis Congress 1, 2, 2A and 3?

A. (Witness peruses Exhibit.) Okay. Now, that I've looked at all four maps, I need you to repeat your question.

MR. FARR: Well, I may want you to look at these first. (Indicating other documents.)

Q. (Mr. Speas) Well, let me just put my question on the table so you can think about it [62] when you're looking at whatever Tom wants you to look at.

My question is simply this: from the time it was first introduced as Rucho-Lewis Congress 1 until the time

it was enacted as Rucho-Lewis Congress 3, there was no significant change in the shape or location of the district? It was enacted essentially as it was first introduced? That's the question.

A. Did you want me to look at something?

(Addressing Mr. Farr)

MR. FARR: You might want to look at these color versions just because – well, go ahead and answer the question.

A. Okay. I'm going to answer your question.

Q. (Mr. Speas) Okay.

A. Again, it depends on what you judge as significant. You know, in a redistricting plan, a movement of one VTD could be extremely significant, particularly, to an incumbent. So, in order to answer that question with a high degree of precision, I'd have to do a comparison on the system between the plans to see what happened.

So, I think substantially the same would [63] be a better definition.

Q. Okay. And do you recall making any changes in Congressional 12 from the time it was introduced as Rucho-Lewis Congress 1 until it was enacted?

A. Yes, I did.

Q. Okay. And do you recall what those changes were?

A. Not specifically, no. I'd have to go back and review, again.

Q. Okay. Do you recall any of those changes as being significant as you would use the term significant?

A. I don't use – I'm not using the term significant; you are.

Q. Okay.

A. I would –

Q. Were they significant to you?

A. Well, if they weren't – if they weren't important to be made, I wouldn't have made them.

Q. Okay.

MR. SPEAS: Let me ask the court reporter to mark the next document as Exhibit 15.

(Plaintiffs' Exhibit 15 Marked for [64] Identification.)

Q. (Mr. Speas) Dr. Hofeller, you have in front of you Exhibit 15, which I will report to you is the "Stat. Pack Report of Voting Age Population by Race Ethnicity, Rucho-Lewis Congress 3 as printed off of the General Assembly's website.

Do you recognize that document?

A. No, I'm having trouble seeing the document; let alone recognize it.

MR. OLDHAM: That was what I was going to ask you, is –

A. And the pages are stapled together incorrectly.

MR. SPEAS: I'm sorry?

MR. OLDHAM: I said as soon as I saw this, I knew he was going to have trouble reading this.

A. Can I take it apart?

Q. (Mr. Speas) Yes, you can take it apart.

A. I don't know if it – does anyone have a magnifying glass?

MR. FARR: I do.

(DISCUSSION OFF RECORD.)

Q. (Mr. Speas) Do you recognize this as a [65] report generated from the General Assembly's website reporting the voting age population by race for Rucho-Lewis Congress 3, the first page, and Rucho-Lewis Congress 1, the second page?

A. Yes.

Q. And looking at Congressional 12 as enacted in Rucho-Lewis Congress 3, is it correct that that district contains 269,987 black votes?

A. I'm sorry? What type of African-American?

Q. Blacks.

A. What – there are several different –

Q. Does this report – the black voting age population for –

A. Okay.

Q. – District 12 in Rucho-Lewis Congress 3 has 269,987?

MR. FARR: Which one are you on, Eddie?

MR. SPEAS: The first page, the Rucho-Lewis 3.

MR. FARR: 269,987?

MR. SPEAS: Yes.

MR. FARR: Yeah. We'll stipulate [66] that's what it says.

A. I can't find it.

MR. FARR: That's all right. It's there.

A. 269 – oh, that's total population; not VAP.

Q. (Mr. Speas) No, it's voting age population.

MR. FARR: It's voting age population. It's not total black voting age population.

A. I've got it. Yeah, I agree.

Q. And that the total black population is 275,812.

A. Say again now. I'm trying to look.

Q. 275,812 total black population District 12 in Rucho Congress 3.

A. Yes.

Q. Okay. Looking at the second page, was the black population – voting age population in Rucho-Lewis Congress 1 268,871?

A. Yes.

Q. And was the total black population in Rucho-Lewis Congress 1 for Congressional 12 274,671?

[67] A. Yes.

Q. Okay.

MR. SPEAS: Now, let me ask the court reporter to mark this as Exhibit 16. (Plaintiffs' Exhibit 16 Marked for Identification.)

Q. (Mr. Speas) Dr. Hofeller, would you look at Exhibit 16, and tell me whether or not this document contains information about Congress Zero Deviation which was the 2001 enacted Congressional plan?

A. Appears to to me.

Q. Okay. And would you look at the third page of that Exhibit 16 and tell me whether that page lists the voting age population by race by district for the 2001 plan?

MR. FARR: Was this by the 2000 census or the 2010 census?

MR. SPEAS: 2000 census.

A. (Witness peruses document.) It doesn't say that on there, but – .

Q. (Mr. Speas) Okay.

A. Because you ask for it in different ways.

Q. You can, and I asked for it in 2000.

A. Okay.

[68] Q. Let me ask you this – and pull out your magnifying glass.

A. I can read this.

Q. Oh, okay, good. In District 12 in 2001 by voting age population, were there 194,901 African-Americans in District 12?

A. The report so states, yes.

Q. Okay. Now, in 2011, District 12 contained 269,987 blacks, voting age population. That's the number Tom agreed to.

MR. FARR: Which – Eddie, I'm lost. Where are –

A. Th[illegible]'s off the previous report.

Q. (M[illegible]. Speas) Exhibit 15.

MR. FARR: The enacted plan contained – the 2011 enacted plan –

MR. SPEAS: Contained 269,987 black voting age population persons.

Q. (Mr. Speas) Is that correct?

A. May I ask my attorney a question off the record?

Q. You sure may.

(DISCUSSION OFF RECORD.)

Q. (Mr. Speas) Comparing Exhibit 15 and Exhibit 16, Dr. Hofeller, is it correct that –

[69] MR. FARR: Eddie?

MR. SPEAS: Yes.

MR. FARR: Just to clarify, on Exhibit 15, we're looking at voting age population; not total population?

MR. SPEAS: Yes.

MR. FARR: Okay. I just think there was some confusion in your question.

MR. SPEAS: Okay. All – all these numbers are voting age population.

MR. FARR: Right, right, just to clarify for the record.

MR. OLDHAM: If you asked him what the total population was –

MR. SPEAS: I did not mean to ask about total population. I did – there is the category "Total Black" population.

MR. OLDHAM: But that is not total population.

MR. SPEAS: That is not total population. I understand that.

MR. OLDHAM: Okay.

Q. (Mr. Speas) Dr. Hofeller, my question is this: based on Exhibit 15 and 16, is it correct that District 12 as drawn in 2011 contains [70] approximately 75,000 more blacks than the district contained in 2001?

MR. FARR: Under the 2- – the 2001 district – you're comparing the 2000 census to the 2010 census?

MR. SPEAS: Yes, yes.

A. Yes. I don't know why that's relevant though.

Q. (Mr. Speas) Okay. My – my question to you is this: how did you find these approximately 75,000 black citizens in drawing District 12?

A. Well, the – the correct comparison are the 2010 census figures of the old district to the new district. Of course it would be different. The populations were smaller then.

Q. But there are 75,000 more black citizens in District 12 in 2011 than 2001, correct?

A. Again, I don't agree with the premise of your question. The benchmark, if you have a benchmark, which is really a Section 5 term, would not be the district as it was in 2001. It would be the district as it is at the end of the decade with the new census.

So, the census found most of them. [71] That's where they came from.

Q. How did you go about fulfilling the direction you received from Senator Rucho and Representative Lewis to increase the black voting age population in District 12?

A. I believe I've already mentioned that, that – that the issue there was really Guilford County and the fact that the black community was fractured by the Democrats in 2001 for the political purpose of making District 13 more partisan in their favor.

And as that wasn't the objective of our plan, there were new – going to be a new bunch of districts surrounding District 12 that we were worried that there

would be a challenge because the black community would have been fractured if the district were left in the same place.

So, my instruction was not to increase the population. My instruction was to try and take care of that problem, Guilford, but the primary instructions and overriding instruction in District 12 was to accomplish the political goal of making the district strongly Democratic and pulling strongly Democratic voting areas [72] out of the surrounding districts to make them more competitive or keep them competitive for the Republicans.

That's what I believe I said last time you asked me that.

Q. Is it an accident that the black voting age population increased by several percent from 2001 to 2011 in District 12?

A. An accident?

Q. Yes.

A. What do you mean by an accident?

Q. That was an inadvertent result? Was that an intended result, or unintended result?

A. It was not an intended result. The intended result was to increase the Democratic voting strength in the Twelfth. It was that when – it was constructed after the Cromartie case, and it was that – it's been that ever since. It's a political district; not a racial district.

And the goal was to accomplish political ends. The problem is that the Republicans' political ends and objectives for that whole area were entirely different than the Republicans' objectives this time around.

[73] And – and it was influenced by that, and it was influenced by population shifts. So, I can't –

MR. FARR: Excuse me, Dr. Hofeller. Did you mean the Democrats' interests were different from the Republicans' interests? You said Republicans twice.

A. I'm sorry. The primary difference between the 2001 redistricting cycle and the 2011 redistricting cycle was that in the recent cycle, the one we're still dealing with, the Republicans were in control. In the last cycle, the Democrats were in control, and they had entirely different political objectives that they wanted to accomplish in the creation of this map as a whole.

Q. (Mr. Speas) So, your testimony is that the increase in black total population in District 12 from 2001 to 2011 is an inadvertent?

A. No, that's not my testimony.

Q. Is it your testimony that it is a consequence of your use of the 2008 Obama election results to assign VTDs to the district?

A. Partially.

Q. And what else?

[74] A. The shape of the district, again, was influenced by the goals of the Republican redistricting group – the General Assembly majority in constructing the entire plan, and the goal was to make the Twelfth District stronger in terms of Democratic vote.

And when that was done, these were the consequences.

Q. In their July 1, 2011 report to the people of North Carolina, Senator Rucho and Representative Lewis said, "Because of the presence of Guilford County in the Twelfth District, we have drawn our

proposed Twelfth District as a black voting age – at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District."

Did you receive an instruction from Senator Rucho and Representative Lewis to draw the Twelfth District at a level above the percentage of black voting age population in the 2001 version?

A. No. As I said before in my previous answer – do you want me to repeat it?

Q. Yes, please.

[75] A. Okay. The problem in Guilford County was that Guilford County was a Section 5 county. When the Democrats redistricted the county in the previous map, they fractured the African-American community for political purposes.

And that political purpose was to strengthen the Thirteenth District. When the district in the northern end of Guilford County was being drawn in the Republican map in 2011, it was clear that that district was not going to be a Democratic district.

So, in order to be cautious and draw a plan that would pass muster under the Voting Rights Act, it was decided to reunite the black community in Guilford County into the Twelfth.

Q. Okay. Dr. Hofeller, would you put your

Exhibit 8 back in front of you, which is your report?

(DISCUSSION OFF RECORD.)

A. Okay.

Q. (Mr. Speas) Dr. Hofeller, turn with me to page 23 of your report, which is the last page of your report.

And my questions will be about paragraphs 68, 69, 70 and 71, if you want [76] to take a minute to review that.

A. (Witness peruses document.)

Q. Have you had a chance to look at it?

A. I have.

Q. Dr. Hofeller, my question is this: with respect to Congressional District 1, was compliance with the Voting Rights Act or the creation of safe and competitive districts more important?

A. The primary factor governing the creation of the entire plan, including the First District, was to accomplish the political policy goals of the General Assembly to equalize the populations, to stabilize the populations by going into the urban area, to account for the population shifts within the State and to ensure that Section 2 – District 1 is a Section 2 district – pardon me – would pass muster as a Section 2 district under the Voting Rights Act and under Strickland.

Q. And in drawing Congressional 1, did the law as set forth in the Voting Rights Act, as you and Senator Rucho and Representative Lewis predominate over your political goals?

MR. FARR: Objection to the form.

[77] A. Well, I don't agree with the premise of your question, but the – the – again, the placement of where the First District was located and accomplishing the political goals were not necessarily in opposition to one another, as were any of the other goals.

So, it was one factor out of many.

Q. (Mr. Speas) Okay.

MR. SPEAS: Can I take a few minutes to look over my stuff?

MR. FARR: Sure.

(SHORT BREAK 10:55 - 11:04 A. M.)

Q. (Mr. Speas) I have one more set of questions. Dr. Hofeller, would you put Exhibit 8 back in front of you, which is your report. And I want to talk to you about paragraph 33 of your report on page 10.

And I am particularly interested in the sentence in paragraph 33 that says, quote, "My experience in drafting and evaluating plans has continued to enforce my expert opinion that the best predictor of future election success is past voting behavior, not registration."

Did I read that correctly?

A. Yes.

[78] Q. And that is your opinion?

A. Yes.

Q. All right. And would it be accurate then, Dr. Hofeller, that the best predictor of the results of elections in Congressional Districts 1 and 12 would have been the past election results in those districts?

A. I'd say I'd have to agree with that, yes.

Q. Okay.

MR. SPEAS: Thank you very much.

A. Am I done?

MR. SPEAS: You're done. I'm sorry.

MR. FARR: I just have a couple of questions – very few; actually, maybe just one. Cross-Examination by Mr. Farr:

Q. Dr. Hofeller, would you pull out Exhibit 10, which is the second report of the Professor.

MR. SPEAS: The second report?

MR. FARR: Yeah, of the Plaintiffs' expert witness.

A. Okay.

Q. (Mr. Farr) Do you remember testifying that you thought that in this second report, the Plaintiffs' expert had relied to some extent on election results? Do you remember [79] saying that today?

A. I did.

Q. Would you go through this and tell me if you can point out where the expert relied on election results?

A. I'd really have to – it would be better if I could be read back the context of what I said.

Q. Well, I think you made a comment that you thought in the second report that he had relied upon election results to some extent. I wanted to clarify what you meant by that. I wanted you to – well, let me be more specific.

A. Okay.

Q. In this second report, does Plaintiffs' expert actually look at any actual election results in an election?

A. I believe in Table 1 on page 18.

Q. Yeah.

A. He did the correlation between Obama's share of the two-party vote and the racial composition of VAP and registered voters in VTDs. That classifies in my term election results.

Q. Can you explain that a little more? [80] What is your understanding of what he did?

A. Well, he computed the black and white voting age population for each VTD, or he took out of the data – one or the other, and he took out the black and white voter registration. Of course, it doesn't speak at all about the independent, which is a great deal of the vote.

And then ran a correlation of that, and the racial composition of the – of the VAP and the two-party vote. So, he added the Obama vote and the McCain vote, and found a total of that and created percentages for the two-party Obama vote and the two-party McCain vote.

And he ran the correlation analyses.

Q. Okay. Did you – when you were drawing these districts, did you rely on information that would be similar to what is in Exhibit 10, the Plaintiffs' expert's second report?

A. All of it?

Q. No, no, just what we just talked about.

A. Oh.

Q. The election results.

A. I'm sorry. Table 1? Of course not. There are a lot of things that you would look [81] at about a district after it's drawn, but the redistricting system doesn't calculate on the fly.

There's just – you can't – after you move each little unit in the district, you can't go through a full analysis of it. We'd still be doing the plan today. So, the answer is no.

MR. FARR: All right. That's all I have.

MR. SPEAS: Thank you.

A. You're welcome. Nice seeing you again.

(WITNESS EXCUSED.)

(FURTHER DEPONENT SAITH NOT AT 11:10 A. M.)

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[1] NORTH CAROLINA GENERAL ASSEMBLY

JOINT SENATE AND HOUSE COMMITTEES ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Legislative Office Building, Room 643
Thursday, July 21, 2011, 10:00 a.m.
Reported by Denise Myers Byrd, CSR 8340, RPR

Worley Reporting
P.O. Box 91447
Raleigh, NC 27675
919-870-8070

[2] SENATOR RUCHO: Let's present the Rucho-Lewis Congressional 2A map.

REP. LEWIS: Ladies and gentlemen of the Senate, the House Redistricting Committee, I'm Representative David Lewis, Senior Chair of the House Committee. I wish to begin by saying good morning to you all and thank you all for giving your time to be here today.

Today I will present to you a plan developed by Senator Bob Rucho, Chair of the Senate Redistricting Committee, and me to provide for the creation of 13 Congressional Districts for the citizens of the State of North Carolina.

Senator Rucho and I are proud to present for your consideration the plan before you entitled Rucho-Lewis 2A.

From the very beginning of this process, our goal has been and remains the creation of fair and legal Congressional Districts. In doing so, our process has included an unprecedented number of public hearings.

We held 36 public hearings before the release of any maps. This provided an opportunity for members of the public to address any concerns regarding redistricting that they may have and that [3] they would consider before maps were drawn.

After the release of our proposed Voting Rights Act District, we held another seven public hearings in which we asked the public to comment on the voting rights districts that were presented and also on any other redistricting matter that they may wish to expound upon.

Ten public hearings dedicated to receiving public comments after the release of our first Congressional Plan, Rucho-Lewis 1. Ten additional public hearings after the release of our respective proposals for legislative districts which also provided the opportunity for the public to comment on Rucho-Lewis 1.

Additionally, we provided easy access for public commenting – for public comments to be provided on the North Carolina General Assembly website and invited additional written comments both through e-mail and the U.S. Postal Service.

Senator Rucho and I thank the thousands of citizens who expressed and exercised their rights to offer comments at these public hearings or submit written comments.

All of these comments have been reviewed by the Chairs and preserved as a part of the [4] permanent record of citizen input on this important task.

We have also taken the unprecedented step of providing the leadership of minority parties in the House and the Senate specialized computer hardware and software in their respective offices, along with

staff support, to use those products which is available to all members.

To further encourage diverse participation from members, we took the unprecedented act of providing office space, computer technology and staff support to the Legislative Black Caucus. The budget provided to the Legislative Black Caucus for staff support alone exceeded $64,000. These resources were directed by Chairman of the Legislative Black Caucus, Senator Floyd McKissick, and the respective members of that caucus.

Today we are pleased to discuss the product of this effort and respectfully submit our proposed 2011 Congressional Plan. We believe it fully complies with applicable federal and state law. We also believe that a majority of North Carolinians will agree that our proposed plan will establish Congressional districts that are fair to North Carolina voters.

[5] In addition to input from citizens, we also considered the following: first, the use of the current Congressional plan as a frame of reference. The current Congressional plan could not be retained for several reasons.

Thus, our proposed plan – pardon me. While we did use the current plan as a frame of reference for redrawing the new Congressional district, our proposed plans could not simply adopt them because they do not comply with the zero deviation requirement. That refers to compliance with one person, one vote.

Based upon several decisions by the United States Supreme Court, Congressional districts must be drawn at equal population. The ideal population for a North Carolina Congressional district under the 2010 Census is 733,499 people.

Redrawing districts with equal population necessitated significant changes in the boundary lines of the current districts. Revisions were required because six of the current Congressional districts are underpopulated below the ideal number. Those are Districts 1, 5, 6, 8, 10 and 11.

In contrast, seven districts are overpopulated above the ideal number. Those are [6] Districts 2, 3, 4, 7, 9, 12 and 13.

The population shift between our 13 districts is largely a result of more rapid population growth in the Mecklenburg, Piedmont and Research Triangle areas of our state than in the more rural areas located in eastern and western North Carolina, respectively.

Third, we were committed to being in compliance with the Voting Rights Act. Our proposed plan, if adopted by the General Assembly, will need to be pretty clear under Section 5 of the Voting Rights Act.

States have the option of seeking administrative pre-clearance through the United States Department of Justice or by filing a lawsuit seeking pre-clearance to the United States District Court in the District of Columbia.

To obtain pre-clearance, we are obligated to show that our plan is not retrogressive or purposefully discriminatory. We believe our plan accomplishes this goal.

We also considered the particular districts currently represented by black incumbents. Voters in the First and the Twelfth Congressional Districts are represented by two [7] African American members of Congress, Congressman G.K. Butterfield and Congressman Mel Watt. As part of our inves-tigation into fair and legal Congressional Districts we sought advice from Congressman Butterfield and from

Congressman Watt. We believed that we could benefit from hearing their views on how their districts should be redrawn in light of the population movement.

Senator Rucho and I met with Congressman Butterfield; Senator Rucho met with Congressman Watt.

The State's First Congressional District as originally drawn in 1992 has a majority black – excuse me. The State's First Congressional District was originally drawn in 1992 as a majority black district. It was established by the State to comply with Section 2 of the Voting Rights Act.

Under the decision in the United States Supreme Court in Strickland versus Bartlett, the State is now – pardon me. Let me come back to that point.

The primary concern with the First District is that it was underpopulated by 97,500 people. Thus, in order to comply with the one person, one vote requirement, over 97,500 people [8] had to be added to create a new First Congressional District.

We sought and received both oral and written comments from Congressman Butterfield and have incorporated his thoughts into the proposed new First Congressional District.

There are some who have criticized us and encouraged us to eliminate the First District because of its shape. Those who have made this argument fail to understand that the 2011 General Assembly inherited the First District from prior General Assemblies and that prior General Assemblies enacted the First District in order to comply with Section 2 of the Voting Rights Act.

For example, some of the same critics are apparently unaware that the shape of the First District has been

approved by the federal District Court as compliant with minority population compactness. It would be legally imprudent, we decided, to dissolve this district.

However, as I've already said, we cannot keep the 2001 version of the First District because of two flaws: First, the current First District is underpopulated, as I've said, by over 97,000 people. Second, it does not include a majority [9] black voting age population, which later in these remarks I may refer to as BVAP, that is required by Section 2 of the Voting Rights Act.

Thus, any revision to the First District requires the addition of over 97,000 people and among those added must be a population sufficient in number of African Americans so that the First District can reestablish itself as a majority black district.

Prior to the release of Rucho-Lewis 1, we discussed both of these problems with Congressman Butterfield. We believed that he understood and agreed that his district would be drawn into either Wake or Durham Counties to cure the district's equal population and voting rights deficiencies.

We understood that Congressman Butterfield preferred that his district be drawn into Wake County as a solution to that problem.

We also discussed with Congressman Butterfield that redrawing his district into Wake County may result in the withdrawal for his district of one or more counties covered by Section 5 of the Voting Rights Act. Our understanding of Congressman Butterfield's preference was reflected in the initial version of the Congressional map [10] filed and labeled Rucho-Lewis 1.

During the public hearings, several speakers expressed concern about our decision to withdraw

from the First – to withdraw from the First District several counties covered by

Section 5 of the Voting Rights Act. Despite these, we received only one other proposal that would bring the First District back to a majority black level.

This sole, proposed alternative drew the First District into Durham County instead of Wake. The proposal also included all of the sections for – all of the Section 5 counties currently found in the 2001 version of the First District.

Following the public hearing, Congressman Butterfield issued a statement disputing our understanding of our prior discussion with him. Thus, we now understand Congressman Butterfield's position regarding the First District. It appears that he may have no preference in redrawing his district into either Wake or Durham Counties.

We assumed Congressman Butterfield would support keeping the black population in Section 5 counties at higher levels as compared to the amount of black population in Section 5 counties under the [11] 2001 version of the First Congressional District.

Based upon this feedback, Rucho-Lewis 2 has drawn the First District into Durham County instead of Wake.

There is a historical precedent for a district that combines Durham with counties located in eastern North Carolina. Moreover, our revised version of the First District brings it up to the ideal population with other districts and reestablishes it as a majority black district.

While our initial version of the First District was fully compliant with Section 2 and Section 5 of the Voting Rights Act, our second version includes

populations from all of the Section 5 counties found in the 2001 version of the First Congressional District.

Moreover, the total BVAP located in Section 5 counties in Rucho-Lewis 2 exceeds the total BVAP currently found in the 2001 version of Congressional District 1.

Again, some of our critics complained about the appearance of the proposed Twelfth District. Again, these critics failed to understand that we inherited the Twelfth District from prior General Assemblies.

[12] Further, this district has been approved by the United States Supreme Court as a district lawfully drawn to elect a Democrat. This district, as a part of our submission, has also been cleared – been pre-cleared under Section 5 of the Voting Rights Act.

In adopting the Twelfth District – excuse me. In adopting the Twelfth District, we intended to accommodate wishes expressed to us by Congressman Watt as we understood him and continued to include populations located in Mecklenburg, Guilford and Forsyth Counties.

Our revised version of this district makes it more compact and continues the district as a very strong Democratic district. Our revision of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 general election.

We have been accused of illegally packing blacks into the Twelfth District and illegally diluting the influence of black voters. We have repeatedly asked our critics for any case law that supports these arguments. To date, none has been provided.

By continuing to maintain this district as [13] a very strong Democratic district, we understand that

districts joining the Twelfth will become more competitive for Republican candidates. Finally, we agreed on the Twelfth District to reduce population because the 2010 census showed it is currently overpopulated.

Minority population was also considered in other districts as well. No district in the 2001 Congressional Plan contains a Black Voting Age Population in excess of 28.75 percent except for the First and the Twelfth.

Our proposed – excuse me. Our proposed Fourth Congressional District establishes one district with a black voting age population of 30.72. That is the Fourth Congressional District.

Our proposed District 8 has a black voting age population of 17.91 percent and a Native American voting age population of 7.03 percent.

The average black population in the other nine districts is 13.24 percent. The lowest black population is found in the Eleventh Congressional District. It is at three percent.

We believe that our plan as proposed fully complies with both Section 5 and Section 2 of the Voting Rights Act.

[14] We also considered point continuity in past Congressional plans, prior legislative leadership elected to make a few Congressional Districts contiguous by mathematical point. All of our Congressional Districts are contiguous in a real and meaningful manner.

Number 5, while not required in drawing Congressional districts, we did consider the impact and the importance of whole counties and whole precincts. Counties and precincts are two specific

examples of communities of interest. Like other interests, they must be balanced.

Again, while not required in Congressional redistricting, we have attempted to respect county lines and whole precincts whenever it was logical to do so and consistent with other relevant factors. Many of our precinct divisions were prompted by the creation of Congressman Butterfield's majority black First Congressional District or when precincts had to be split in order to achieve the zero deviation population.

Next, we considered urban counties. We decided to continue the tradition, as reflected in the 2001 plan, that results in the division of urban counties and their populations being divided [15] into more than one Congressional district. We agree with the decision of prior legislative leadership that urban counties are best represented by multiple members of congress.

Moreover, creating more multiple districts within an urban county makes it less likely that the Congressional districts between the time of enactment and the time of the next Census will experience the significant population shifts that have made the 2001 plan so unbalanced. Unlike other plans, we extended this practice uniformly to Buncombe County.

We also sought to create more competitive districts. The federal and state constitution allows legislatures to consider partisan impacts in making Congressional redistricting decisions.

While we have not been ignorant of the partisan impacts of the districts that we have created, we have focused on ensuring that the districts will be more competitive than the districts created by the 2001 legislature. We feel it worthy to note that while three of the proposed districts have outright majority

Democratic registered voters, none of the proposed districts have majority Republican registered voters.

[16] Finally, the combination of Democrats plus unaffiliated voters constitutes significant majorities in all 13 districts.

In conclusion, based on our historical and unprecedented outreach to the public, outreach to the members of the General Assembly and to interested parties, following a responsible schedule to debate and pass these maps which allows time for pre-clearance to occur without interruption to the 2012 election schedule, adherence to federal and state law, especially or specifically the one man, one vote and the Voting Rights Act.

We feel we produce maps that are legal, competitive and offer all citizens the chance to elect the candidate of their choice.

We respectfully ask the approval of this plan, and I appreciate your indulgence in allowing me to offer these remarks, and at the discretion of the Chair, I'll be happy to yield to any inquiries. Thank you

SENATOR RUCHO: Thank you very much, Chairman Lewis, for an excellent explanation of the Congressional maps.

As a reminder to each member of the Joint [17] House and Senate Committee, the Senate – first of all, the committee meetings today will be strictly informational. There will be no votes or amendments taken today.

As a reminder to Senate members, we will be meeting for an explanation of the Senate map between 2:00 and 4:00 in 544 LOB, and for the House members, you will be meeting roughly 5:00 to 7:00 for approximately two hours in 643 LOB, So put that on

your calendar. We will want everyone's attention there.

That being said, I open it to committee members to questions that would like to be asked regarding the Congressional districts. Are there any questions?

Yes, sir, Representative Rapp.

REP. RAPP: Thank you, Mr. Chair.

And, Chairman Lewis, I would like to start by having you just review for me one more time who was actually involved in crafting these maps.

REP. LEWIS: Representative Rapp, I was intimately involved in the crafting of these maps. Chairman Rucho was intimately involved in the crafting of this map.

To assist us we hired a – forgive me if I [18] do not use the correct terminology. We hired a map drawer whose name is Tom Hofeller. Mr. Hofeller is a well-respected expert in the field of map drawing and you used to say that he would put the pen to the paper but I guess actually he put the mouse to the screen, and in full disclosure, Representative Dollar was also very involved in the construction of these maps.

REP. RAPP: Follow-up.

SENATOR RUCHO: I'm sorry. Yes, sir.

REP. RAPP: Just a follow-up. Were there other members of this committee that played an active role in the drawing of the maps?

REP. LEWIS: Representative Rapp, resources were made available in the General Assembly for members to have input. Input was requested by the Chairs either in a formal presentation or by simply having conversation, and so to those members that chose to

have a role in drawing this map had one in terms of the Chairs listened to what they had to say.

REP. RAPP: Thank you.

SENATOR RUCHO: Thank you, sir.

I have a question from Representative Fisher.

[19] REP. FISHER: Thank you, Mr. Chairman. You referred to the historical process of – and number of public hearings, and I'm wondering – I have a question, and then I have a follow-up.

In the most recent set of public hearings, because of the fact that Asheville had more people in attendance at previous hearings than any other ones in the state, we were sort of – we were taken offline and there was not like a direct feed into the ether of all the comments that were coming from Asheville. And what I wondered is are – were the comments that were taken from Asheville, since we were offline on this last public hearing, were they all recorded and taken into consideration as a part of this Congressional map 2A that we're looking at and the House map that we are – that we just seen, the two maps?

REP. LEWIS: Yes, ma'am.

REP. FISHER: So those were all on – follow-up.

SENATOR RUCHO: Follow-up.

REP. FISHER: So there is a record of all of those comments that have fed into this latest iteration of the Congressional map and of the House map?

[20] REP. LEWIS: Yes, ma'am. And if I could add, we also sent one of our Chairs, Representative Dollar, to make sure that we got direct feedback, ears on the ground, not just the transcripts and the audio to review. So the answer is, yes, ma'am.

REP. FISHER: And one follow-up.

SENATOR RUCHO: One follow-up.

REP. FISHER: Thank you. The procedure for issuing online comments, how long will you be referring to those comments that are being put into the record on line and, you know, for what period of time will they be considered?

REP. LEWIS: Representative, it's our intent to maintain that link until these plans have passed both the House and the Senate. Every week the Chairs receive a report of those comments that were sent in that we read and review. Those comments are also a part of the general public record that anybody may review at their discretion.

REP. FISHER: Just one last follow-up.

SENATOR RUCHO: One more.

REP. FISHER: Is there a cutoff date for receipt of those online comments? Because we're going to continue to have maps with changes, I'm assuming, all throughout this process, adjustments [21] to what we've already seen and been able to comment on at the public hearings. Is there a cutoff point for receiving and acting on comments?

REP. LEWIS: Representative, we have not discussed an exact cutoff date. It certainly will not be before the plans have passed both the chambers. My estimation is the earliest – the earliest that the comment – the on-line comment page would be shut down would be August 1st, after we adjourn, not before.

SENATOR RUCHO: All right. I agree with you. Yes, it will be at the decision of the Chairs, and right now we want to hear those comments up until the point where those maps are, you know, fixed because of the vote of the House and the Senate and agreement.

Representative Hackney.

REP. HACKNEY: This question is for Representative Lewis. I guess, why did you depart from the existing map in such dramatic ways? There are certainly ways to use the existing map to equalize the numbers. And who was it that urged you to do that?

REP. LEWIS: Representative Hackney, the lines were redrawn to reflect the 1.5 million [22] people that moved into our state in the past decade. I would reiterate that we have requested input and maps from you and from all other members.

REP. HACKNEY: Follow-up. What analysis did you go through to bring you to the conclusion that District 1 needed to be raised above 50 percent by voting age population? Was there analysis that was performed to do that or was that just something that you all decided to do?

REP. LEWIS: Representative, the most recent court case, in 2009, as you recall, the Pender County case Bartlett versus Strickland, I believe, defined that a majority of minority districts meant 50 plus one. It seems intuitive to me that majority-minority means that there are a majority of minorities.

SENATOR RUCHO: Follow-up.

REP. HACKNEY: Follow-up. Thank you, Mr. Chair.

So it was your opinion that that was a required thing to do under the law?

REP. LEWIS: Yes.

SENATOR RUCHO: I have Senator McKissick for a question.

SENATOR McKISSICK: This will be perhaps a [23] short series of questions.

SENATOR RUCHO: Through the chair.

SENATOR McKISSICK: Let me ask you this: did you all use staff or consultants other than legislative staff to help draw the Congressional maps as we see here today?

REP. LEWIS: Senator, we obtained legal opinions from the North Carolina Attorney General's Office and also through outside retained counsel as has been the practice since 1991.

The bulk of the map that you see was drawn by Mr. Hofeller. The map was refined by General Assembly staff in the extent that they found inconsistencies with the map. And I can give you an example that we have – as you know, the way the mapping program works, it uses the Census blocks. There are many Census blocks in the state which have zero population, and an example might be a very large patch of land that has to be reserved over a giant road overpass, and our staff was very – as those blocks contain no people, the staff – our staff here was very helpful in pointing out that they still had to go somewhere, so I tried to answer as thoroughly as I can.

SENATOR McKISSIK: Just follow-up.

[24] SENATOR RUCHO: Follow-up.

SENATOR McKISSIK: In terms of legal staff that you used, what firms or persons could you identify, and will those people be available to us to ask questions if we had questions or need some of the details on the plan?

REP. LEWIS: The Attorney General staff, we met with – and I will not attempt to get their exact title correct. We met with Tiare Smiley and Alex Pierce, both of whom are either Chief Deputy AEGs or something. I don't know their exact title. They were

designated for us to meet with in a series of two meetings that was actually held with Attorney General Cooper, who instructed us to deal with them on his behalf.

In addition to that, as was established in 1991, the Speaker, the President pro tem, and the two Senior Chairs, Senator Rucho and myself, obtained outside counsel through the firm of Ogletree Deakins. The names of the two attorneys that we have dealt with at Ogletree are Phillip Strach and Tom Farr.

It is my understanding of the relationship between Ogletree and the leadership that they are counsel to the four and not to the committees.

[25] SENATOR McKISSICK: Would we be able to ask them any questions or not?

REP. LEWIS: No, sir.

SENATOR RUCHO: No. The answer to that question.

SENATOR McKISSICK: Let me ask you this: in terms of the computers that were utilized to draw the maps, I understand Maptitude was available here in the General Assembly, as you indicated, but was the Maptitude systems used here in the General Assembly the only systems used for drawing the maps or was there outside computers used for drawing these maps as well?

REP. LEWIS: Not only were there outside computers used, there were outside companies used. Redistricting this year has taken on excitement. People had access to free online services. One in particular called Dave's Redistricting that a speaker in Asheville used to present us a plan that largely was adopted and is what you see before you as the First – as the First Congressional District.

SENATOR RUCHO: Follow-up.

SENATOR McKISSICK: Follow-up, please. Would we be able to, if we needed to, access [26] outside computers that might have been utilized or where those resources were?

SENATOR RUCHO: No, sir.

SENATOR McKISSICK: Okay. And follow-up, please. In terms of the data that was used in, say, for black voting age population, there was some subtle distinctions between data that was available earlier through the committee and the House maps and the data that came to us later, particularly as it dealt with voting rates, so the numbers did not exactly – they weren't consistent.

To what extent was it interpreted which set of numbers would be utilized and why?

REP. LEWIS: Pardon me. One moment, sir.

Senator, all the information that was used was downloaded from the State's system. We used what the State refers to as any part black voting age population. That was the number that we used.

SENATOR McKISSICK: Were you aware -quick follow-up. Were there distinctions between numbers provided earlier on and the ones that came to us later?

REP. LEWIS: If I may, Mr. Chairman. SENATOR RUCHO: Yes, sir.

REP. LEWIS: Did you provide those to us?

[27] SENATOR McKISSICK: They came to us through the committee. They were disseminated and distributed to us. There was subtle distinctions between the data that was provided in terms –

SENATOR RUCHO: All the data that everyone used that was eligible came from the ISD who put the

database together when we received the census material in mid – in February and mid March. That same day that you used in your computer material as in the other minority party members is the same data that everyone else used.

SENATOR McKISSICK: Quick follow-up.

SENATOR RUCHO: Follow-up.

SENATOR McKISSICK: Let me ask you this: for the First Congressional District, I know there was concern about – since it was in a sanctified area of the initial plan, Rucho-Lewis plan, that came forth, what I'll call the finger counties, more or less, were omitted from the plan. Of course, now I see that there were portions of those counties included.

Could you elaborate as to what the justification was and the rationale for the plans that we see before us now in contrast in comparison to your earlier plans for District 1 in particular?

[28] REP. LEWIS: The plans have changed based on the concerns expressed in large part by Representative Butterfield and our attempt to make certain that we included additional Section 5 when possible.

SENATOR McKISSICK: Thank you.

SENATOR RUCHO: Senator McKissick, question for you. We worked very hard to be sure that we complied with all the previous precedents that have been set by previous redistricting committees. And to go back to your question about access to attorneys. Do you recollect in 2003, they were private counsel, was that attorney in the private counsel open to committee questions?

SENATOR McKISSICK: I do not know the answer to that question. I wasn't serving in 2003.

I was more or less concerned about whether – based upon what we were hearing about the way the plan was organized and whether the internal logic or thoughts that were implicit in that was data that would be available to us now or likewise, the numbers that were utilized, if there was some justification from legal counsel or from outside parties as to what numbers would be best utilized based upon requirements from Section 5, [29] Section 2, in the case law.

SENATOR RUCHO: To respond to your concern, if you paid close attention to the statements that Representative Lewis and I put out, that was clearly delineated within those statements as to how the entire criteria was established and to what areas we were looking at that were going to be in compliance with what the Justice Department expected us to do as part of our submission. Okay.

SENATOR McKISSICK: Thank you.

SENATOR RUCHO: All right. I have Representative Stam.

REP. STAM: Chairman Lewis, have you received the proposed Congressional District alternate plan from any member of the House or Senate minority party?

REP. LEWIS: No, sir.

SENATOR RUCHO: Okay. I have Representative Hackney, another question.

REP. HACKNEY: Representative Lewis, what is the plan for complying with Section 5? Where and what procedure do you plan to achieve new clearance or attempted pre-clearance of this plan?

REP. LEWIS: Representative Hackney, we're in consultation with the Attorney General's Office [30]

and also with our private counsel. The preferred method at the moment is to do what this General Assembly did in 2003, which is to seek pre-clearance through the District Court and the District of Columbia. Another possibility is to seek a joint strategy where we file with both the Department of Justice in DC that was recently done in the state of Virginia and ultimately resulted in pre-clearance before the Court.

REP. HACKNEY: I have a follow-up.

SENATOR RUCHO: Follow-up.

REP. HACKNEY: Is that plan for all three submissions?

REP. LEWIS: Yes, sir.

REP. HACKNEY: And, Mr. Chairman, if I may follow-up to my earlier suggestions. I wonder if you followed the advice from Congressman Butterfield about the matter of his pushing his district over 50 percent as you contend is required.

Did you consult with Congressman Butterfield about that, and did he advocate for pushing it over 50 percent?

REP. LEWIS: The last consultation with Congressman Butterfield was a written letter that [31] he sent and was read into the public record at the Ahoskie site I believe on July 18th.

REP. HACKNEY: Follow-up, Mr. Chair.

SENATOR RUCHO: Follow-up.

REP. HACKNEY: Did you give any input suggesting that – any input from the African-American community suggesting that that needed to be made into a majority African-American district? I don't recall any.

REP. LEWIS: We believe that the districts that we have presented are made in all 13 districts in accordance with the law and would have been happy to evaluate anything that your office would have submitted to the contrary or anything that any other organization or group would have submitted to the contrary.

SENATOR RUCHO: Okay.

REP. HACKNEY: Thank you.

SENATOR RUCHO: Thank you, sir. I have Senator Walters.

SENATOR WALTERS: Thank you, Mr. Chair. As we've heard today, there's been a great deal of attention paid to the five counties in the First Congressional District which are included in the 40 counties of the Voters Rights Act and those [32] counties have been moved out and moved back in.

However, it appears there's been very little attention paid to the fact that Robeson County is one of those counties which is the poorest and most diverse county in the state, I might add, that those maps are significantly Hoke and Robeson where we ended up with two

Congressional districts where we have a huge population of the Lumbee Indian tribe of about 55,000, who I asked the question in this committee prior was any consideration going to be put in that regard.

And I was just wondering what consideration have we had in looking at the population – diverse population in these poor counties in the eastern North Carolina as they're split into two to three Congressional districts.

REP. LEWIS: Thank you, Senator. As I state in my opening remarks, it was believed that – to have the

voices of two members of Congress serving on various committees in the United States Congress will actually benefit the areas that are split among more than one.

SENATOR RUCHO: Follow-up.

SENATOR WALTERS: Thank you. Also with [33] the Senate Congressional Districts, Congress-man McIntyre who served on the Armed Services Committee for the last ten years or more serving Fort Bragg for that district who has taken out of that Congressional district now.

You know, the continuity between what we do in our military today and North Carolina being the military-friendly state that it is, are we giving any consideration to how we are protecting our military bases and their representation?

REP. LEWIS: Yes, sir. I apologize for not having the current map before me. I thought I did. Fort Bragg has been represented by the Second for the past ten years.

SENATOR RUCHO: Representative Lewis, we can put that on the screen right now, if you'd like.

REP. LEWIS: If you're waiting for the response. I apologize. The post of Fort Bragg has been split between the Second District, which is seen in brownish orange color, and part of the Eighth, which is split – which is that light teal green.

If you'd like to speak further about Camp Lejeune in Onslow County, is still a part of the [34] Third. And I apologize for not knowing the exact locations of the other important military installations.

SENATOR RUCHO: As another point, as those maps were drawn, you have to recognize the zero deviation because of one person, one vote. There is a loss of flexibility as you start approaching the 733,494

number, so it takes – it's challenging to make sure we include all counties when you hit that magic number, so just for your information.

All right. I've got Senator Nesbitt for another question.

SENATOR NESBITT: Thank you, Mr. Chair. I want to go back to the First District a little bit and ask – you were receiving opinions from various people. Have you received any legal opinions that state that the original First, as you drew it, was not in compliance with the Voting Rights Act?

REP. LEWIS: No, sir. We thought that it would and received opinions that it would clear.

These changes were made because we were attempting to be responsive to comments received at the public hearings that were held.

SENATOR NESBITT: So the opinion was that you could exclude Section 5 counties that had been [35] in a minority district and that would not be considered retrogression? Is that basically what you were told?

REP. LEWIS: Representative –

SENATOR NESBITT: What you were told. That may be better.

SENATOR RUCHO: Come through the Chair with your questions, please.

REP. LEWIS: Representative Nesbitt, there are Section 5 counties that are not part of the first map. They were part – there are Section 5 counties that were not part of the First in 2001. There are Section 5 counties that were not part of the First in 1991.

SENATOR RUCHO: Follow-up.

SENATOR NESBITT: And, Mr. Chair, I'll be glad to ask you these questions would be fine with me. You're the Senate chair.

SENATOR RUCHO: Chairman Lewis is presenting this bill, and if I need to consult with him, I will.

SENATOR NESBITT: All right. Well, the question I would ask you is as to those counties which are currently in the First that are Section 5 counties, is it your – was it your legal opinion [36] that you could exclude those counties from the current district when it was not necessary and not have retrogression?

REP. LEWIS: We felt that Rucho-Lewis 1 was a legal plan that would obtain clearance.

SENATOR RUCHO: May I help you with that? Just for your knowledge, our understanding that is retrogression is determined statewide, not specific counties.

And secondly, there were some additional Section 5 counties added to the First District as others were deleted.

And the response of Representative Lewis and myself was to do our best to go along with Congressman Butterfield's suggestions and concerns, and we believe that the first map was legal, fair and would have met pre-clearance approval and this map above with District 1 the way it is now will also meet pre-clearance approval.

SENATOR NESBITT: Follow-up.

SENATOR RUCHO: Follow-up.

SENATOR NESBITT: Did you explore or did you discover other ways to figure First District, including more of those five counties that were previously covered?

[37] REP. LEWIS: Representative Nesbitt, the current design that you have before you at your desk was largely a result of public input that came from a private citizen in Asheville.

We would have been glad to have viewed any plans that your office sent in full.

SENATOR NESBITT: I understand. I've got an expert in Asheville on the first.

SENATOR RUCHO: Follow-up.

SENATOR NESBITT: Yes, sir.

SENATOR RUCHO: Okay.

SENATOR NESBITT: Can you tell who my expert in Asheville is on the first Congressional District?

REP. LEWIS: Senator, I don't recall his name. I remember there was great hype because he also calls himself rogue mapo, and he was very active on the blogosphere, or whatever that's called. And when we found out that he was going to present in Asheville, we were very interested in what he had to say. And we can go back there, sir, and get you his name because he did actually state it for the record. I just don't recall it.

SENATOR RUCHO: Follow-up.

SENATOR NESBITT: Yes. I wanted to ask [38] one question now that you've gone to Asheville just as a matter of interest. I notice from your statistics the Eleventh, as you've drawn it, has the lowest minority population of any of the districts.

Can you tell me what your thinking was to move the only significant minority population in the far west and Asheville out of the Eleventh and into the Tenth?

REP. LEWIS: The only thinking was that Asheville deserved the same opportunities to be represented by more than one member of Congress.

The area that was chosen under the drawing that you see is a neat, contiguous fit to the Tenth. Again, we would have been glad to review any other drawing that were submitted to us.

SENATOR RUCHO: Follow-up.

SENATOR NESBITT: Did you look at the makeup of the population as you were moving out of that area and realize that you were moving the only significant minority population other than American Indians that existed in the western part of the state out of that district and into the other one when it already had a low percentage?

REP. LEWIS: No, sir, I did not.

[39] SENATOR RUCHO: Well, I have Representative Rapp question.

REP. RAPP: Thank you, Mr. Chair. The question I was going to ask was raised by Senator Nesbitt.

SENATOR RUCHO: Thank you, Senator Rapp. Representative Hackney, do you have a question?

REP. HACKNEY: I do. And I would like to direct your attention now that you have the maps up to the central part of the state, Districts – as you have been designated – 6, 4, 2 and 8, and I'd like to discuss the issue of the compactness with you just for a minute and get your thoughts.

I've heard the Fourth District, which has been basically a Triangle-centered district since the 1930s, as I recall it, I've heard it described in this map as Italy. You have the Adriatic Sea on one side to the east and I guess the Mediterranean on the other side and Sicily down at the Hoke County line.

And I wondered what standard of compactness you used in designing the Fourth District, particularly since the Twelfth District and the First District, at least in your opinion, taken [40] care of on either side there are no important Voting Rights considerations that would be apparent there, so what was the standard of compactness that was used for the Fourth District?

REP. LEWIS: Representative Hackney, as you know, compactness is one of the factors that can be considered. We believe that the Fourth is compliant as a compact – viewed as a compact district.

SENATOR RUCHO: Yes, sir. Follow-up.

REP. HACKNEY: Yes. I wondered if you could comment on the – just take Harnett County, for instance. What is the difference between the population in the Fourth District and that in the Second District in Harnett County, for instance?

REP. LEWIS: Representative Hackney, we've already expressed that we see a benefit, as has been established by prior General Assemblies, of having more than one member of Congress that represents an area.

I think this is – as the representative elected from Harnett County, I think it will be a good thing to have more than one voice.

REP. HACKNEY: Follow-up.

SENATOR RUCHO: Follow-up.

[41] REP. HACKNEY: So could you not have attempted to get as many Congressmen as possible in as many areas as possible, could you not have just made a sliver all the way down to New Hanover and Brunswick, the Fourth District, also in order to achieve – further achieve that purpose?

REP. LEWIS: I'd be glad to review any plans you submit.

SENATOR RUCHO: Representative Hackney, I wasn't here at the original time, and apparently you were when apparently compactness of the Twelfth District was designed by y'all and was approved by the courts, so if you're talking about compactness and you approved the Twelfth and the original First, then I would assume that the Fourth would probably fall in line with those. Don't you agree with that?

REP. HACKNEY: May I respond, Mr. Chair?

SENATOR RUCHO: Yes, sir, please.

REP. HACKNEY: As you well know, the Twelfth District was drawn specifically for voting rights purposes. The Fourth is not. So the standards that you're talking about, your comment is just not applicable.

REP. LEWIS: Representative Hackney – [42] Mr. Chairman.

SENATOR RUCHO: Yes, sir, please.

REP. LEWIS: Would you state what case in which it was affirmed as a Voting Rights – as a Voting Rights district? The information that we have is that it was affirmed as a strong Democratic district, not a Voting Rights district.

REP. HACKNEY: Well, Mr. Chairman, as I understand this committee meeting today is an opportunity for us to ask you questions, not for you to ask us questions, and so that's the spirit in which – this is your map, you draw it, and so my questions are about your map.

SENATOR RUCHO: Thank you.

Just as a matter of information for the committee, O'Reilly versus Hunt was the case that surrounded the Twelfth Congressional District vote.

REP. HACKNEY: Follow-up.

SENATOR RUCHO: Yes, sir.

REP. HACKNEY: Whether it's a Voting Rights district or not, it was drawn for the purpose of advancing the African-American representation in the United States Congress. The Fourth District is not, and so the point I made, which is equally applicable, which is that the [43] Fourth District could have been made compact and has not been.

REP. LEWIS: Mr. Chairman.

SENATOR RUCHO: Yes, sir.

REP. LEWIS: The Twelfth Congressional District was not drawn, as was argued by the State of North Carolina as a VRA district, to advance the interest of minorities. What is being stated is incorrect.

SENATOR RUCHO: Follow-up, sir.

REP. HACKNEY: Is it not the case that the Twelfth District has been represented by Representative Mel Watt, who happens to be African-American from its inception to the current time? And does that not advance an African-American interest in your opinion, Representative Watt being in the United States Congress?

REP. LEWIS: Representative Hackney, the Twelfth was drawn in the prior two plans, and this plan, as a very strong Democratic district.

I have already said in my opening remarks that we include whole precincts in this district that voted strongly for President Obama. It is a Democratic district. I have no comment to offer on the service of

Congressman Watt. As far as I know, [44] it is very, very good. He's very, very good.

SENATOR RUCHO: Thank you. Going on to Representative Floyd.

REP. FLOYD: I would direct the Chair that Representative Lewis did not have the correct map when making his representation.

SENATOR RUCHO: Sorry. I thought you had a question.

I have Senator McKissick, question.

SENATOR McKISSICK: I would like to go back to the First District for a quick minute. And, of course, we have the plan Rucho-Lewis Congress 2A. Could you go put back on the screen the map that shows the current districts for a moment. I guess I want to ask one or two questions that relate to the current configuration compared to what we have before us.

And what my question is related to specifically as to Pasquotank County, Perquimans County, Chowan and Washington and Gates. As you can see marking those whole counties in their entirety all within the First District. Now, what was the logic and justification, rationale, so to speak, behind now including only four counties of these particular counties and why as to these [45] particular portions that we now see in the plan?

REP. LEWIS: Senator, as I've tried to explain earlier in my remarks, not only were we tasked of finding 97,536 people, but we were tasked with keeping the African-American percentage over 50 percent.

It would be a very fair assumption that the areas of the counties in which you speak helped with – would help achieve that goal of finding the correct –

SENATOR RUCHO: Yes, sir, before we take your follow-up, each member of the committee has a copy in their notebook of the existing

Congressional map that Senator McKissick is alluding to so it's available to you.

Follow-up question.

SENATOR McKISSICK: When you refer to the 50 percent, of course, today, this particular First District that is 50 percent is not 50 percent black voting age population; is that correct?

REP. LEWIS: Pardon me. I don't have that.

SENATOR RUCHO: At the present time, it's 48.63.

SENATOR McKISSICK: Okay. And I'm just [46] trying to make sure I understand what you are identifying as the law that would require you to reach 50 percent as the threshold. I know you referenced earlier the pending case that were referring to legislative districts, but was there ever a legal opinion provided you that it was controlling as to the racial composition of Congressional Districts?

REP. LEWIS: Just to clarify, Senator, we did not – we did not seek legal opinion or – in other words, we understand the difference between a state court ruling on state maps than on a federal court ruling on federal map.

Based on the advice of counsel that we received, the first was contingent to be a majority minority seat. Majority-minority means more than a majority, and that's how it was drawn.

SENATOR RUCHO: Senator, also the fact that Section 2 Voting Rights Act is addressed via the Strickland decision on Congressional under the Voting Rights Act.

SENATOR McKISSICK: Follow-up, if I can.

SENATOR RUCHO: Yes, sir.

SENATOR McKISSICK: In terms of precinct splits that are embodied within the map that we see [47] now as 2A, do you have any idea how many precinct splits we're looking at here as compared – as to what we have in terms of our current plan bill, 2003 plan?

REP. LEWIS: Yes, sir. If you'll give me just a moment, I do actually have that.

SENATOR McKISSICK: If we could have the precinct and the county splits, that would be helpful.

REP. LEWIS: I apologize that I do not have this in this notebook. I've been informed by Chairman Rucho that prior to the Senate committee meeting at 2:00 that information will be provided to all the – to all of the members of the Senate committee, and I will commit that it will be -that it will be provided to members of the House as well when we reconvene at 5:00.

SENATOR McKISSICK: Thank you, sir.

SENATOR RUCHO: I have Representative Pierce.

REP. PIERCE: How many Congressmen were drawn out of their home district and what were the basis for that? How many were drawn out of their home district and what was the basis for that?

REP. LEWIS: In Rucho-Lewis plan 1, there [48] was none. In Rucho-Lewis plan 2A, there are four members of Congress that are in the same Congressional District.

REP. PIERCE: Just follow-up, please. SENATOR RUCHO: Yes, sir, follow-up.

REP. PIERCE: You answered that, but how many were drawn out of their home district as it relates to down our way, Robeson County?

REP. LEWIS: Representative Pierce, in trying to draw a Congressional map, as we've stated before, there is supposed to be a zero deviation in the population. As the First evolved into a different shape, the Third then evolved into a different shape, the Second evolved into a different shape.

So to answer your question, only two were drawn into districts that they do not currently -excuse me. Only two reside in districts in which they do not currently represent, but I think it's fair to also point out that there is – the only residency requirement as defined by the U.S. Constitution is that you be a resident in the state in which you win.

REP. PIERCE: Thank you, sir.

SENATOR RUCHO: I have Senator Blue.

[49] SENATOR BLUE: Thank you, Mr. Chairman. Representative Lewis, I'm interested in because of the shape in population of the First and Twelfth, question in how is your concept of packing since both those districts have greater than 50 percent minority African American.

REP. LEWIS: Senator Lewis, my understanding is packing has been defined by the Supreme Court as placing so many minority residents into a district that you are precluded from drawing a second minority to a second minority district.

SENATOR BLUE: Follow-up.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: So it's your belief that putting more minorities into a district than historically has been required to elect and allow the citizens in that

district to elect a representative of their choice is not packing?

REP. LEWIS: Senator, packing is defined by the Supreme Court.

SENATOR BLUE: Let me ask you, if I could.
SENATOR RUCHO: Follow-up, sir.

SENATOR BLUE: The current black percentage in the Twelfth Congressional District, that is, in the 2001 plan, it is considerably less [50] than it is under Rucho-Lewis 2A.

REP. LEWIS: I know it's less, yes, sir.

SENATOR BLUE: And follow-up.

SENATOR RUCHO: Yes, follow-up.

SENATOR BLUE: And the current African American population and voting age population in Congressional District 1 is less under the current, that is, 2001 plan and 2003 plan, than it is under Rucho-Lewis number 2A.

REP. LEWIS: Please forgive me, sir; I did not follow what you were asking.

SENATOR BLUE: You've got more African Americans under Rucho-Lewis 2A in Congressional District 1 than currently reside in Congressional District 1 under – the percentage, that is, under the 2001 and 2003 plan.

REP. LEWIS: Under the 2001 plan, I believe the number had fallen to 48 percent and 97,000 people short. The current plan does have it over 50 percent, yes, sir.

SENATOR BLUE: Follow-up.

SENATOR RUCHO: Yes, sir.

SENATOR BLUE: The views and analysis of Congressional District 12, the idea that it was a democratic performance district as opposed to a [51] minority of Voting Rights Act district, Section 2 district.

REP. LEWIS: Yes, sir.

SENATOR BLUE: What standard did you use to determine the partisanship, that is, the democratic partisanship, of the competitiveness in District 12 as compared to the party competitiveness in the other districts? In your initial comments you said all the districts were more competitive.

REP. LEWIS: If I said that, I misspoke. The Twelfth as it was originally drawn and pre-cleared was drawn as a strong Democratic performance district. It was redrawn under Rucho-Lewis 2A. We used the vote for President of the United States in 2008.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: So does that mean you're drawing again as a partisan competitive district, that is, you're putting the population in it for partisan reasons rather than race reasons?

REP. LEWIS: Yes, sir.

SENATOR BLUE: Follow-up.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: Did you look at the racial [52] makeup of the precincts, census track and other components of it as you built that Congressional District?

REP. LEWIS: No, sir. We did after we submitted it and the specs that you have and on line came out.

SENATOR BLUE: Follow-up.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: And Congressional District 4, Chairman Lewis, you came into Wake County, in fact, you came into my precinct, my Senate district. Did you look at the racial makeup of my Senate district before you moved it into the Congressional District 4?

REP. LEWIS: No, sir.

SENATOR BLUE: So you have not looked at the racial makeup of any of the districts that were drawn up here until after they were drawn?

REP. LEWIS: Not in drawing Four or Twelve. We did when we drew One, yes, sir.

SENATOR BLUE: Follow-up.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: I noticed that the other terminus in District 4, it is Cumberland County and Fayetteville. Did you look at the racial makeup of [53] District 4 in Fayetteville prior to or after the district was drawn?

REP. LEWIS: I did not look at it prior, no, sir.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: And so it wouldn't surprise you to know that both the district makeup for Wake County and the Fourth Congressional District is overwhelmingly from the black community as well as the makeup in Cumberland County, or have you discovered that since the district has been redrawn?

REP. LEWIS: What I have discovered, Senator Blue, is that under the 2001 plan was passed – 2001 plan was passed, the Fourth District – the Fourth was 49 percent – pardon me – 49 percent Democrat and it is now – it is now 55.12.

SENATOR BLUE: Follow-up.

SENATOR RUCHO: Follow-up.

SENATOR BLUE: And is that percentage after you put in the black population of Wake County and Cumberland County in your new Fourth District?

REP. LEWIS: That percentage as you [54] see in the Fourth was in the plan before.

SENATOR BLUE: One last question.

SENATOR RUCHO: Yes, sir, follow-up.

SENATOR BLUE: What kind of Section 2 analysis did you perform on District 12 before you finalize the map?

REP. LEWIS: Senator Blue, we received legal counsel advice that – as section 12 has been largely the same for 20 years and has been a part of the pre-clearance process of our map that it was a good bet that if we kept section 12 – excuse me – if we kept District 12 largely the same that it would not be an impediment to getting our map cleared.

SENATOR BLUE: Last one.

SENATOR RUCHO: Yes, sir, one more question.

SENATOR BLUE: Do you contend that essentially the same – the 50 plus percent African American population is 41, 42 percent African American population?

REP. LEWIS: Senator Blue, I do not recall at the top of my head what the benchmark of District 12 was. As I can tell you, we attempted and we did use – except where we had to split [55] precincts for population reasons, we – the only factor that was – the only variable was the 2008 race for the presidency.

SENATOR BLUE: One final follow-up.

SENATOR RUCHO: Last question.

SENATOR BLUE: You indicated you had a photographer, mapmaker, whatever you want to call it. Did you tell him, that is, you, Senator Rucho and Representative Dollar, tell him what precincts or census tract or whatever other geographic unit you may have used to put into the Twelfth District and the First District or did he just do it on his own?

REP. LEWIS: No, sir. He did not do it on his own. After the advice of counsel explained to us that the Twelfth was approved as a strong democratic district, we instructed him to use whole precincts which voted for President Obama instead of Senator McCain.

SENATOR RUCHO: Mr. Chairman, just a question for Senator Blue.

Senator Blue, throughout the media you've talked about packing and you asked us the question. I think for the benefit of the committee, would you please give us your definition of packing and, more [56] importantly, where it's verified by any court decisions would be very helpful so we can understand your criticisms of the map.

SENATOR BLUE: Senator Rucho and Representative Lewis's responses to my present view where I said you were packing, I did not refer to relevant Supreme Court decisions in describing that, but it's about like Justice either Black or Douglas said about pornography, those who know it know it when they see it.

And so when you're putting unnecessarily high numbers of African-Americans in a district under the pretext of satisfying the requirements of the Voting Rights Act, the policy issues in my neighborhood and in the places where I move around in is that you're

stuffing people and cramming them into districts so that you can get them out of the way of other districts.

SENATOR RUCHO: So I assume that you had no legal background or basis on that analysis that you made.

SENATOR BLUE: Only 38 years of practicing law.

SENATOR RUCHO: We may need to see a court decision on that, sir. Thank you.

[57] Okay. I have Representative Floyd now.

REP. FLOYD: Thank you, Mr. Chair. I just want to ask a question or several questions, and one from the first representation that we saw North Carolina grow by 1.5 million citizens. Just where did that growth take place?

REP. LEWIS: Representative Floyd, let me begin my response by saying that all of the Census information is on the website.

Most of the growth occurred around the Mecklenburg area and around Wake County area. There was also growth throughout the Triad area that exceeded the state average but was not quite as much as around Charlotte and around the greater Raleigh.

REP. FLOYD: Follow-up, Chair.

SENATOR RUCHO: Follow-up, sir.

REP. FLOYD: Basically central North Carolina; is that a correct?

REP. LEWIS: Representative Floyd, I would define Mecklenburg County as an important hub in our state. I don't – maybe you would define it as being in central North Carolina. Maybe you would define it as being in western. Maybe you define it as Piedmont. I can't answer that.

[58] REP. FLOYD: Thank you, sir. Basically, when we as North Carolinians look at North Carolina and we divide it, we look at Piedmont, there's the western to Piedmont and the coastal region. That's how we basically define it. And as we look at Charlotte to Raleigh, we consider that that is the economic engine that drives our state.

And so when we look at that population in that central part of North Carolina, my question is: if that's the case, then, you know, it looks like a lot of shifting left and right when basically growth – population growth is in the central part of the state.

SENATOR RUCHO: Representative Floyd, I think you're accurate because, in essence, I think the districts in the east and the west which didn't – we all grew, and I think it was nine percent, but the 1-85 corridor seemed to pick significantly more of the 1.5 million people. That's why it shifted towards the middle.

REP. FLOYD: Follow-up.

SENATOR RUCHO: Yes, sir.

REP. FLOYD: And then in my community, we were blessed to have 2, 7 and 8 when we started. Now we have 4, 2 and 7 now, and we look at that as [59] Fort Bragg and our community, as I've stated many times, we're going to have about 28 to 32 general with just over a billion dollars per month for expenditures up there, and to look at this, you know, we are a military-friendly state. This raises some questions about that, so that's just my comment.

SENATOR RUCHO: Thank you, sir.

I missed Senator Jones. And I want to say publicly, Senator Jones, thank you very much for attending each of our public hearings. You are a loyal soldier in

helping us get this done, and we appreciate your expertise and your willingness to help. You have a question.

SENATOR JONES: Thank you, Mr. Chair, and I was obliged to do it.

My question is that when I look at this map that's on the screen and I'm looking at the Congress 2A, and my feelings are that when my children will later on become adults in ten years that we still have a race as a major issue. And I look at the way the counties in Perquimans and Pasquotank and so forth, those little yellow spots in there, I think some of it alienates whether you're black and white, why we have to do that, I [60] mean, other than just to get populations.

So I guess the feeling of what I am more concerned about is that we had put race – race is at the head again. No matter what we do, we keep getting race at the head no matter what we do and we're not going forward. When we have these opportunities to change the way North Carolina is seen and viewed, we have not done that.

It might still get people elected to different offices and everything, but have you looked at the color of a person's skin? Have we done anything on that yet? And I don't think we have.

I think that sometimes we still draw these maps so that it's by a perception and not so much about the overall view of how we as North Carolinians can be. Either you're a Democrat or you're a Republican, either you're black or white or native American. Sometimes we have to take a look at where we are at. We're all North Carolinians here.

So again, I don't want to walk across the street, he's represented by him because who he is because of who

I am. If we can all be more compact than that, I think we can all be a better [61] North Carolina as a whole.

SENATOR RUCHO: Thank you, Senator Jones, well said.

Senator Stein, good to see you this morning.

SENATOR STEIN: Thank you, Mr. Chairman.

Representative Lewis, you said in response to some of Senator Blue's question as to why you all opted to put greater than 50 percent African Americans in District 12 and District 1 that you had a legal memo. Perhaps to be able to evaluate whether to vote for such an act, can you please make that memo available for our review as well?

REP. LEWIS: Senator Stein, the record can certainly correct me, I don't recall using the word "memo." I said that we had legal counsel advice to do so.

SENATOR STEIN: So no written memo about this greater than 50 percent packing issue?

SENATOR RUCHO: Senator Stein, to help on this, and I'm sure you've read all of the statements that were made, but that was clearly delineated in the statements and the appropriate background that was present there and also in the legislative guide.

[62] SENATOR STEIN: Thank you. And follow-up.

SENATOR RUCHO: Follow-up.

SENATOR STEIN: You had also mentioned in your initial statement, Representative Lewis, about the competitive nature of the districts and that you then stated that you all looked to the 2008 presidential election to determine what the democratic performance would likely be in a district.

And I note that in 2008, according to the maps that we're being asked to consider, Democrats won three and Republicans won ten. And if you look at the most recent state-wide election, the U.S. Senate race, it's also a ten to three split. And in none of the ten races where the Republican prevailed in your proposed districts did the Democratic candidate exceed 38 percent.

So how can you – when the state splits at about 54 percent – as I understand it, in 2008 democrats won 54 percent of the Congressional votes cast and then 2010 Republicans won 54 percent of the Congressional votes cast. That's a 7-6 split one way or the other. How do you justify going to a ten to three split?

REP. LEWIS: Senator Stein, our first [63] priority was to redraw all Congressional District to improve upon our original drawing to make sure that it was not a barrier to pre-clearance.

We then had the issue of drawing the Twelfth because even though it is a democratic seat and not a minority seat, there's been more litigation to our knowledge in the Twelfth than any other part of the map, so we wanted to stay as consistent to what the courts had approved before.

If you'll then look – the rest, as you know, were required to have a zero deviation population, so we drew the lines in such a way as to make them as compact as practicable – you know what I'm trying to say – and things fell as they did.

SENATOR RUCHO: Senator Stein, to take it the next step further, if you'd like, what the competitive happens is the fact that since there are larger numbers of Democrat registration in ten of those districts there is a greater opportunity for a candidate to join the unaffiliated voters with a good message and swing

over so there will a greater opportunity to win that, and that's what competitive nature is, and that's what it was designed to provide competition.

[64] I've got two more people on board here. I've got Representative Hackney first.

REP. HACKNEY: Representative Lewis, you keep mentioning the legal precedents with respect to packing. And I do note that Professor Joyner of the North Carolina Central Law School provided direct precedents to you in a recent public hearing.

I'm wondering if you're also aware that a Virginia court this week failed Virginia's legislative map on constitution because it packed black voters in a few districts to diminish their political influence and place more black voters into 17 districts, quote, than are necessary or reasonable to give minority voters a reasonable opportunity to elect a candidate of its choice by mandated by Section 5 of the Voting Rights Act and the legislature was ordered to draw a new map.

Were you aware of that?

REP. LEWIS: I'm aware that the Virginia plan was pre-cleared by the United States Department of Justice.

REP. HACKNEY: Follow-up?

SENATOR RUCHO: Follow-up.

REP. HACKNEY: And are you aware that the [65] Virginia has declared it unconstitutional?

REP. LEWIS: Representative Hackney, I don't follow very much news in the state of Virginia other than to reiterate that the Department of Justice pre-cleared the maps.

REP. HACKNEY: Thank you.

SENATOR RUCHO: And one last person. I have Senator Nesbitt.

SENATOR NESBITT: Thank you, Mr. Chairman.

I want to go back. I think Senator McKissick answered a question about this, but we struggle trying to determine where your numbers on black voting age population came from. They don't seem to be the traditional numbers.

Could you tell us where they came from and if you have an opinion that they are the numbers that we should go by in analyzing our districts. And if so, what is that opinion?

REP. LEWIS: Senator Nesbitt, all of the information that we have came directly from the General Assembly computers which came directly from the United States Census Bureau.

If there is – if there is an issue with the specific question that you asked, this is the first time that such an issue has been raised. So [66] all I can base my answer on is the information that we literally took straight from the NCGA computers.

SENATOR RUCHO: Some of that information, if you refer to page number 2 on these Rucho-Lewis statement released on June 17, you'll see a clear explanation of the black voting age population which should explain your question completely.

REP. HACKNEY: Mr. Chair, I'm not sure I would know where to even start looking to find that. If you could just tell us what it says. I was just asking.

SENATOR RUCHO: It's right on the website, and it is – let's see. I'll repeat it.

In creating new majority African-American districts, we are obligated to follow the decisions in Stephenson 1 and 2 as well as the decisions by the

North Carolina Supreme Court and the United States Supreme Court in Strickland versus Bartlett, affirmed by Bartlett v. Strickland.

Under the Strickland decisions, districts created to comply with Section 2 of the Voting Rights Act must be created with a Black Voting Age Population, BVAP, as reported by the Census, at the level of 50 percent plus one. Thus, in constructing VRA majority black districts, the [67] Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50 percent BVAP.

To determine percentage of BVAP in proposed districts, we have used a more specific Census category listed in our reports as what would be total black voting age population. This category includes persons of 18 years or older who self-identifies as wholly or partially any part black.

It is our understanding that this Census category is preferred by the United States Department of Justice and the United States Supreme Court, Georgia v. Ashcroft.

All right. Seeing no additional questions – I've got one housekeeping – if I can find the paperwork that I dropped.

Okay. Some of the guidelines for the members of the committee. And can you take up the house lights a little bit here, please. Excuse me.

Chairman Lewis, any other comments?

REP. LEWIS: No.

SENATOR RUCHO: Thank you so much. Committee members, as we begin the process of debating the redistricting plans, I would like to provide – and this is from Representative [68] Lewis, myself and staff – I would like to provide information

on making drafting requests for amendments, community substitutes or bill drafts.

I ask that all requests for amendments or committee substitutes are compliant with the following: one, be clear in your request. Your request should contain specific instructions to the staff as to the clear intentions of the substance of the amendment.

Two, and very important, contact information. Please include your contact information so the staff can contact you with any questions between the time the request is made and the time the committee meeting at which the amendment will be offered.

Three, be submitted in a timely fashion. Please remember that this is a process that – in this process timely means sufficient time to develop the map, drafting the amendment and with associated maps, statistics and printing of the package. As you know, that's a lot of work to get these packages together by our staff people. Staff needs – this can take up to four hours depending upon complexity of the request and other pending requests.

[69] And, also, who to contact. Please route all drafting requests to Erika Churchill in the Research Division 733-2578 or erika.churchill@ncleg.net.

Every effort – according to staff, every effort will be made to turn around your request in time for it to be offered. Providing a way to contact you and that's why that contact information is very critical. It's important for us to have the staff deliver any amendment or bill.

Seeing no other questions or comments, we'll call this part of the meeting adjourned and we will be meeting this afternoon at 2:00.

We will be meeting downstairs, 544, which I told you earlier.

(Hearing adjourned at 12:07 p.m.)

[70] STATE OF NORTH CAROLINA

CERTIFICATE

COUNTY OF WAKE

I, DENISE L. MYERS, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, the officer before whom the foregoing Joint House and Senate Hearing was conducted, do hereby certify that the proceeding was taken down by me to the best of my ability and thereafter transcribed under my supervision, and that the foregoing pages, inclusive, constitute a true and accurate transcription of the proceedings.

Certified this the 25th day of July 2011.

Denise L. Myers

Notary Public 200826100153

[1] GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011
SENATE REDISTRICTING HEARING

TRANSCRIPT OF THE PROCEEDINGS
Legislative Office Building, Room 544
16 West Jones Street, Raleigh, NC 27601
Friday, July 22, 2011
10:16 a.m. to 11:07 a.m.

The Committee met, pursuant to call, at 10:16 a.m., in Room 544, Legislative Office Building, Hon. Bob Rucho (Chairman) presiding.

COMMITTEE MEMBERS PRESENT:

Bob Rucho, Chairman, Andrew C. Brock, Vice Chairman, Harry Brown, Vice Chairman, Tom Apodaca, Harry Brown, Peter S. Brunstetter, Kathy Harrington, Ralph Hise, Neal Hunt, Brent Jackson, Bill Rabon, Malcolm Graham, Ed Jones, Floyd B. McKissick, Jr., Martin L. Nesbitt, Jr., Michael P. Walters

Reported by Bryan Collins, CVR, Notary Public

[2] PROCEEDINGS

CHAIRMAN RUCHO: This Senate redistricting meeting comes to order. We had a great opportunity to discuss the Rucho-Lewis Congressional 2A Bill yesterday during the Joint House and Senate Committee meeting. There were a lot of questions, a lot of answers, and I think a good bit of debate.

What we'll be doing today is this Committee meeting will be operated exclusively with Committee members today and so they will be allowed to debate, ask questions, and/or submit amendments or anything to the Rucho-Lewis Congressional 2A.

Because of the fact that we wanted to give staff an opportunity, even if we should finish prior to 12:00 o'clock today, we will be meeting at 2:00 to 4:00 today in 544. You can leave your material here. The doors will be locked. And we'll be picking up the Senate map plan this afternoon between 2:00 and 4:00. And primarily, it's to give staff an opportunity to prepare for that meeting.

So that being said, Senator Brock, would you please come forward. And I think you need to have a motion as a member of the Committee here.

SENATOR BROCK: Thank you, Mr. Chairman. As a [3] member of the Committee I'd like to move for adoption of Senate Bill 453.

CHAIRMAN RUCHO: Yes, sir. We have a motion for adoption of Senate Bill 453 for discussion. All in favor, please say aye.

(A CHORUS OF AYES.)

CHAIRMAN RUCHO: All opposed, nay.

(A CHORUS OF NAYS.)

CHAIRMAN RUCHO: Ayes have it. Thank you.

Senator Brock, we've had a lot of discussion yesterday. Would you briefly describe what you have, and let's move it forward.

SENATOR BROCK: Thank you, Mr. Chairman. I think most members of the Committee and most of the people of not only the audience but also those that attended our over 70 hearings which had input into these districts, have pretty much seen what's been out there for a while and at the proper time, I'd like to move for a favorable report.

CHAIRMAN RUCHO: We have a motion for a favorable report for the Senate Bill 453-PS. Okay, is there any discussion on this?

SENATOR NESBITT: Of course.

CHAIRMAN RUCHO: Okay. Well, okay. Senator [4] Nesbitt, I assume you have the floor.

SENATOR NESBITT: I didn't ask for the floor but we do want discussion.

CHAIRMAN RUCHO: Okay. And do you have some amendments? Very good.

SENATOR NESBITT: I've got an amendment, and some other things.

CHAIRMAN RUCHO: Okay. We look forward to that. Well?

SENATOR NESBITT: Well, if nobody else will start I'll crank it up here. We asked yesterday a number of times about split precincts. Do we have any more data on that? Were we ever able to find out how many split precincts we had in these maps?

CHAIRMAN RUCHO: Ms. Churchill said it was e-mailed yesterday but she's trying to pull it back up again for you.

SENATOR NESBITT: Mr. Chairman?

SENATOR BROWN: Mr. Chairman? I think those numbers were out and I think it was 250-some I think was the number, Erika, or 270-something I think was the amount.

CHAIRMAN RUCHO: Was that on the Congressional map? Senator McKissick?

[5] SENATOR MCKISSICK: Yeah, I think the numbers, which I mentioned yesterday, those were

dealing with the legislative districts. In the morning session I'd asked for similar information as related to the Congressional maps. So your recollections are correct about the legislative in the afternoon. Some information came to me after I asked the question but I wasn't 100 percent sure of its accuracy, so I just want to make sure it got verified. But I did see an e-mail went out to me.

CHAIRMAN RUCHO: Okay, we've got the answer to that. For the Rucho-Lewis, there are 74 split precincts, and for the Congress zero deviation, 22. You have your answer.

SENATOR NESBITT: I'm sorry, I didn't understand the answer. Under the Rucho-Lewis –

CHAIRMAN RUCHO: 74 split precincts.

SENATOR NESBITT: Okay.

CHAIRMAN RUCHO: And 22 with the existing map, the 2003. 2003?

STAFF: 2001.

CHAIRMAN RUCHO: 2001 Congressional map, as we are presently operating under.

SENATOR NESBITT: 2001, okay. Do you have an [6] explanation for why you had to cut 74 precincts? I understand that if you got deviation down to one, you may have to cut a precinct but that would be -how many have we got, 12, 13? But I don't understand why we're cutting 72. Can someone explain to us why you had to cut 72 precincts?

CHAIRMAN RUCHO: It was in the operation of drawing the maps to zero deviation.

SENATOR NESBITT: Well, who am I asking questions of? You or Senator Brock or who? Who do you want me to ask them?

SENATOR BROCK: Well, I was actually -basically, I would say when you have zero percent deviation, that's zero percent deviation. And we abide by the guidelines that we have in drawing the districts, by the federal guidelines that we have to abide by; that's what you have to go through first. And whether you're talking about precincts or voter tabulation districts, VTDs are different issues, or precincts and VTDs are different from one another.

But you have to go from zero percent deviation. So when you start from the voting rights counties, you start at zero percent there, when you move across the state it like a ripple in a pond. Once [7] you move across you have to be zero percent deviation.

And when you look at the size of some certain precincts in the state of North Carolina, you have some that cover a great amount of area. They're not small and condensed and compact, but they're very large. And so if you just take one person, or three people from one precinct, it looks like a split precinct. But those are lines were set by your local county boards of elections.

CHAIRMAN RUCHO: Okay, follow-up?

SENATOR NESBITT: Let me ask this: How many split precincts are there in District 12? And in response to Senator Brock, I understand what you're saying about getting to zero deviation but that doesn't explain 74. It explains 13, 15, maybe 17, but not 74. I'm trying to find out where they all are.

CHAIRMAN RUCHO: Okay, we're in the process of getting – you asked for Congressional District Number 12, how many split precincts?

SENATOR NESBITT: Well, if they could when they're getting it, just tell us for all of them. I'd like to know for all the Congressional [8] districts, how many split precincts are in each one. That's what I'm really trying to get at here. I'm trying to figure out where they are so that we can get it why they are. Can we get that?

CHAIRMAN RUCHO: We're working on that.

SENATOR APODACA: Mr. Chairman?

CHAIRMAN RUCHO: Senator APODACA?

SENATOR APODACA: Thank you, Mr. Chairman.

While we're doing that, can somebody get us a total amount of precincts in the state of North Carolina also so that we can do a little bit of statistical comparison here? Thank you.

CHAIRMAN RUCHO: Okay, thank you. Senator Walters?

SENATOR M. WALTERS: Thank you, Mr. Chair. In looking at the map of the Seventh Congressional District, my question is what is the basis that you determined is separating Robeson County out of the Seventh Congressional District, with a community of interest of the Lumbee Indian tribe? And also, all our economic development and economic partnerships are back to the east, and now we are directed back in the west, totally out of the community of interest of anything we have in Robeson County.

[9] CHAIRMAN RUCHO: Did you ask that question yesterday?

SENATOR M. WALTERS: No, I asked another question yesterday.

CHAIRMAN RUCHO: Okay.

SENATOR M. WALTERS: I was asking Senator Brock, thank you.

SENATOR BROCK: Thank you. Well, if you look at where the districts were drawn again, re-taking the voting rights areas and looking at drawing the districts from there and moving from east to west, those are the areas that you would draw. We've seen some significant increases in population_ in eastern North Carolina in areas, but when you add the major increases in the Mecklenburg area and also in the Research Triangle area; Orange, Durham, and Wake, those areas basically pushed the maps to the west into different areas. And then when you had the zero percent deviation is to go into that areas to make sure you do protect the voting right areas, and also the – within the North Carolina maps or the late Congressional maps, you have the other court cases that are only pertaining to the State House and State Senate races.

[10] CHAIRMAN RUCHO: Okay. Excuse me, Senator Hise, while we're waiting to get that information for Senator Nesbitt and Senator Apodaca.

SENATOR HISE: And there was another perhaps clarifying question probably for staff on these precincts. When they said that the current map has 22 precincts, is that as it currently exists that 22 are split, or as it was drawn in 2001? Because I know precincts are very variable and they are moved constantly across this state.

CHAIRMAN RUCHO: Would you answer that, Ms. Churchill?

STAFF: The 22 number for the Congress zero deviation split precincts is the number as it was drawn in 2001, using the precinct lines in 2001.

SENATOR HISE: And next question: we receive population information that come in on census tracts that give us a population. Is there any indication that the US Census Bureau used our precincts in drawing the lines for determining where a census tract would be placed?

STAFF: Not to my knowledge, Mr. Chair, but we will be glad to verify that before the end of the day.

[11] CHAIRMAN RUCHO: Thank you for your question. Senator McKissick?

SENATOR MCKISSICK: And this question relates to Congressional District Four, Congressman Price's district. I know in your narrative that was released, your combined statement, you indicated that his district today is pretty similar and comparable to what it is that you've proposed in your new plan. And I was wondering what the basis, the factual basis and analysis for that statement was in light of the difference in the counties that are part of the new district and the way the new district is configured, the community of interest issues. Could somebody address that?

CHAIRMAN RUCHO: Senator Brock?

SENATOR BROCK: Thank you, Mr. Chair. I think if you look at the requirements that we have as far as drawing the districts, those things were met in this criteria in order.

SENATOR MCKISSICK: So let me ask you this –

CHAIRMAN RUCHO: You have a follow-up?

SENATOR MCKISSICK: Follow-up, please.

CHAIRMAN RUCHO: Yes, sir. Thank you.

SENATOR MCKISSICK: Right now, the district is [12] all of Durham County, you know, it's Orange County, it's a portion of Wade, a small portion of Chatham, it's basically it's like a research triangle district in many respects, you know, of all the interests that are combined in creating that, with the activities that are in those combined areas. But now we have it going all the way down into Cumberland County, and it kind of snakes along the way through Chatham, looks like there might be a small point that it connects going down into Harnett that it connects, going into Harnett and into Cumberland.

Now, what are the common community of interest themes, or what is it that makes this district today similar or comparable to what his old district was like? I mean, even in terms of compactness? Before it was exceptionally compact and now it snakes through four different – let's see, more than four. We're looking at it snaking through Durham County, Wake County, Orange, Chatham, Harnett, and Cumberland.

So if you could really speak more to that issue? And I'm wondering, what is this point right here between Chatham and Harnett that's – I guess [13] it looks like there's one point of contact, of continuity, but I don't know what it is.

CHAIRMAN RUCHO: I'll just explain that one. That is a River basin or river connection in that area there. So it is very clear and delineated on the map, that one question.

SENATOR MCKISSICK: Okay. But in context of the rest of that question, what is it now that makes this district similar or comparable to the one he had before? What was the analysis that went into it? What were the details? How did you reach that conclusion?

SENATOR BROCK: The details, again, or the criteria that was set for us as a state, through Federal law, is that we had to draw the districts with zero percent deviation, starting from those counties and moving either – actually, most of them moving westward. And when you do that, you have to hit a certain number of various – keeping the counties together.

And also, by doing that, when you factor in the explosive growth of population in this area, which moved the other district lines and numbers around, I think we're kind of seeing this, looking up high and [14] then looking down low; on the ground you'll see that the different districts are the some because of, you know, of where we're drawing these maps but when you see how these areas are growing, we had to draw the maps accordingly. And that's why you see some look like they're growing in land size and maybe some shrinking in land size, but it's purely based on one person, one vote, which is what we have to abide by.

So that's why the numbers in the districts may look different to you than other people. But you know, it's because of one person, one vote, and abiding by our voting rights counties.

SENATOR MCKISSICK: Okay, follow up, please?

CHAIRMAN RUCHO: Yes, sir. Follow-up?

SENATOR MCKISSICK: Okay, let me ask you this: what is the community of interest between say, rural

Alamance County and say, downtown Raleigh or downtown Durham?

SENATOR BROCK: I would say I keep hearing "communities of interest," and thinking of where that lists on the criteria as far as drawing the districts. I mean, I think you're looking at, you know, almost every district is pretty diverse. Personally speaking, my own street where I live is [15] very diverse. And I mean, that's the thing about it when you look at communities of interest. It's really almost way down the criteria list as to where you're putting things together.

CHAIRMAN RUCHO: I'll help with that a little bit. It's the same criteria as you'd have in the District 1 and was requested by Congressman Butterfield when we drew it from Durham through the eastern part of the state. Same concept.

SENATOR MCKISSICK: Okay. Quick follow-up and then I'll let somebody else ask –

CHAIRMAN RUCHO: Good, last question.

SENATOR MCKISSICK: Sure. I assume that there are different variations or plans that might have been created for District 4, as well as other Congressional districts, other than what's been reflected in this particular version, Rucho-Lewis 2A and the one that preceded it. Are those plans available for review, so we could potentially look at what was considered and rejected?

CHAIRMAN RUCHO: In answering that question, if I may, it would probably be a good time, Senator McKissick, to find out your proposal for this Congressional map, to see what you've been working [16] on for the last three months. Do you have it

available for us to view, and to be able to put it to the public so that they can have a chance to look at it?

SENATOR MCKISSICK: We have worked primarily on districts relating to legislative districts. We've looked at some potential configurations, but I think what we will be introducing with the items that will come to the floor.

CHAIRMAN RUCHO: When might we expect to be able to view your maps on the Congressional, since we're talking about that today?

SENATOR MCKISSICK: Well, really I guess my greatest concern was trying to see what variations the official Committee chaired by you and Rep. Lewis, along with staff, have come up with, that might be viable alternatives to what's before us today.

CHAIRMAN RUCHO: Do you not think it would be appropriate for the people of North Carolina to be able to look at your suggestions as to how we can draw these maps so that your concerns and your definitions about packing and all the other things could be made available, so that the people will [17] know what you're trying to ask for? We're a little dumbfounded as to not knowing what would you like to have in this map, what do you believe a good Congressional map is?

So when might we expect this? And can we see it soon, so that the people will have a chance, the people of North Carolina? We can put it on the website and let them take a look at that, plus your criteria.

SENATOR MCKISSICK: And of course what I'm saying to you, Senator Rucho, is simply this: this morning is an opportunity for discussion about this particular plan that's before us. Alternatives that might be presented would most likely be presented on

the floor. There is still discussion about some things that are out there, and I'm not going to sit here and give you a time frame, per se, when it will be introduced. I believe there will be a plan for Congressional districts introduced when this matter moves forward for floor debate.

At the same time, I guess the thing which I'm making inquiry about, which I think is an appropriate time and opportunity for us to make those inquiries, is to say whatever options did the [18] official Committee, with you and Representative Lewis, as well as the staff? Because I'm sure that your resources have been far, far greater than anything we might have that could offer us some, perhaps, options for what was considered and rejected, as we move forward.

CHAIRMAN RUCHO: Sir, to respond to your question, you have seen everything that we've put before you and the iterations that have been brought forward. We have been waiting anxiously, as the people of North Carolina, since we made a significant investment in revenue, and sources of money that have come to you. I had someone ask me yesterday, what did we get for what you alluded to as the $32,000 out of the $64-65,000 budget?

We are waiting anxiously, and I think the people of North Carolina are waiting for your opinion, rather than just criticizing a map without putting your input into it. When might we expect that map?

SENATOR MCKISSICK: And of course what I'm saying to you, Senator Rucho, is simply this: we're having comment today and receiving comment relating to the plan that is before us for debate. That's [19] the one that's been called up. That's the one where a

motion will be made at an appropriate time for this Committee to move forward with. I think it's only fitting and appropriate to ask the types of inquiries and questions that I've put forth, which other members of this Committee are likely to put forth. When there was a budget provided to the North Carolina legislative black caucus, it's for us to do some research and do some analysis, and to look at other potential options that might be out there. If and when those particular options will be forth will be dependent upon the North Carolina Legislative Black Caucus reaching consensus and sending it together to this Committee and to others.

SENATOR APODACA: Mr. Chairman?

CHAIRMAN RUCHO: Yes, sir, Senator Apodaca?

SENATOR APODACA: I hate to interrupt this eloquence. Can I pose a question, please?

CHAIRMAN RUCHO: Sir?

SENATOR APODACA: Thank you. Mr. Chairman, I'm looking at this map, and I apologize for not being here yesterday, and I know we're all new to drawing these maps. But when you look at this, can you tell me where former Senator Miller's district wound [20] through this? I know, communities of interest, and all. I was just somewhat, you know –

CHAIRMAN RUCHO: His original map? The 2001 map?

SENATOR APODACA: – more experience drawing maps. Yes, sir.

CHAIRMAN RUCHO: Well, I would have to say the one that many of the folks on this Committee and the Senate voted for a map that probably a little more bizarre, and probably community of interest was not

an issue there at all. I don't ever hearing any comments about it, having been here at the time.

SENATOR APODACA: Thank you.

SENATOR BROWN: Mr. Chairman?

CHAIRMAN RUCHO: Senator Brown?

SENATOR BROWN: Just another comment. You know, we had a previous map out that was put out to the public and debated and a lot of input put in it, and we took that debate and those recommendations and changed the map based on some of those recommendations. So I think we've tried to listen to what people have had to say and make changes based on some recommendations, and I think that's why you have the map that you have before you today.

[21] CHAIRMAN RUCHO: Senator Nesbitt?

SENATOR NESBITT: Thank you, Mr. Chairman. When was this latest map released?

CHAIRMAN RUCHO: When was the time of that one?

SENATOR NESBITT: I believe it was two days ago. I mean your proposal was released two days ago. There will be a response to your proposal but it takes a little bit of time for somebody to digest what you're proposing so they can respond to it, and I hope you'll respect that. Senator McKissick has been working hard and so have we, and others, trying to come up with alternative proposals, and you'll certainly get them.

CHAIRMAN RUCHO: Senator Nesbitt, you know, we've all been working hard for the last three months, or four months now, coming forward, and we've gotten not one bit of information, not one question answered,

no input other than criticism. And you know, if you criticize about something like this then very simply, without putting your thoughts on the table, then there's no way of having frank discussion. And to this point, there hasn't been any frank discussion. There's been criticism only, based on no law. I mean, we've asked even questions [22] about law as many of your members have talked about packing and things of that sort.

We're waiting for you very anxiously, as are the people of North Carolina, to see your proposal. And we've been waiting, and we've asked many times. And matter of fact, I saw an employee of Senator McKissick's, asked him, Mr. Gilkerson, who Senator McKissick hired, I said, "When are we going to see your maps? I understand you have maps." He said I've got to talk to Senator McKissick. So I've talked with him. And we've got nothing. And we've got nothing from yourself because of the fact that – I'm not sure that you're having a dissension within your ranks, that you can't come up with a solid idea? Or do you have some differences of opinion? I'm not sure why you're not coming forward with this. The people of North Carolina have been waiting anxiously, Senator Nesbitt.

SENATOR NESBITT: Because we've been waiting for you to produce a map. You produced it two days ago. The Senate map we're taking up this afternoon you produced yesterday. We will respond to it. It's a constant moving target. We hold these public hearings, you get all kinds of input and we expect [23] you to change based on the input and you don't. And so we are left for you to produce a map so that we can see what your intent is so we can know how to respond

to it. I don't want you to be anxious about it. Don't worry about it; you're going to get our opinion.

SENATOR BROCK: Senator Nesbitt, this map that was said was two days ago was a slight minor change. The map that was the Rucho-Lewis Congress 2 was out for a pretty good while. So this is only a minor change, this one map, so the original Rucho-Lewis 2 has been out for a while. So this 2A was just a small minor change.

SENATOR NESBITT: Well, the point is we're down to the point of discussing this bill and that's what we're trying to do. I mean, I haven't seen anybody ask an inappropriate question about it yet.

If I could ask a question?

CHAIRMAN RUCHO: Excuse me, just before you do that, e-mail went out at 10:00 PM on the 20th, on the map, just so you'll – you asked the question. Yes, sir. Question, please.

SENATOR NESBITT: Yeah, that was a day and a half ago. And we're working on it. We are [24] digesting it, and we're trying to find out why you did certain things. One of the things I wanted to know is why we're splitting 72 precincts and where they are so that we can look at that and try to figure out why you did that. That's going to cause disruption at each of those polling places and I'm sure it was for a good reason but nobody has given us a good reason other than to meet the deviation, which doesn't justify 72. It justifies 15 to 18.

Now, the next question is in our analysis of this map, you have moved 48 percent of the black population of the state into three districts. Can someone explain to us how that occurred?

CHAIRMAN RUCHO: Well, that's really what it does. When we were drawing the maps, and especially trying to meet the needs of the request of Congressman Butterfield in reworking the First Congressional District, that had a huge impact on the affect of the map and all the way down the line with the rippling effect that occurs by making changes that were accommodating his section 5 concerns. So that's part of it.

SENATOR NESBITT: Well, that would be a part of it and probably a small part of it. That's one [25] district out of 13. The next two highest are four and 12, which squiggle through multiple counties and have little tributaries running off in every direction. Can you explain to us why it occurred in those districts?

CHAIRMAN RUCHO: Senator Nesbitt, I think that at the point of when 12 was originally put forward, I think you were part of the legislature in voting for that map, which has met preclearance muster. And at this point, you know, they were designed so that we could try to make it as compact as possible and, as I think was alluded yesterday, as it was being put together they were looking for the Obama-McCain precincts that were included in that as what was the originally proposed by the section 12, that met preclearance approval. So that's the answer to that question.

SENATOR NESBITT: Okay, I don't know who I'm asking questions to. I'll be glad to direct them to you if you want me to or I'll direct them to Mr. Brock. You tell me who.

CHAIRMAN RUCHO: That's fine. Go to Senator Brock right now.

SENATOR NESBITT: All right. Yesterday I think [26] we were told that neither one of these were

considered voting rights districts. Is District 4 or District 12, are either one of those voting rights districts?

SENATOR BROCK: I think you do have voting rights in District 12, through Guilford County. I mean I'm trying to think if I wasn't here when you originally drew the district map but I think you would probably know more about the formation of the district than this, than of why 12 took the shape it did in the very beginning. But that's what we were trying to do, is trying to – you've made mention before of trying to keep some districts similar. And District 12 is something when we looked at the concerns through our over 70 public hearings that we had throughout the state of North Carolina. We heard the concern about keeping the first as together as possible, and the 12th as together as possible.

CHAIRMAN RUCHO: Just to add to that, Senator Nesbitt. There is a significant section 5 population in Guilford County and also voting rights activity in the Congressional District Number 1, which was a concern with Congressman Butterfield, [27] and we responded to that in suitable manner.

SENATOR NESBITT: Let me just pose the question this way: tell me what criteria went into the formation of – let's start with 4, in terms of the racial makeup of the district.

SENATOR BROCK: Actually I'll start with 12 because that's what I was thinking of currently.

SENATOR NESBITT: That will be fine.

SENATOR BROCK: You also look at North Carolina's explosive growth of how many people have had moved here, that District 12 had a change in size.

You had, with zero percent deviation of what you're working with, you had to pare down the district to make it smaller and more compact because you have more people that moved to that area. So with that the district got a little bit leaner because it had too many people on it. So that's the reason why our district 12 took the shape. And you look at the other areas where you have voting rights, starting with the first, rippling down into North Carolina, and paying attention to the hearings that we heard from people, I know in Ahoskie, and the request of Congressman Butterfield, that that pushed the other districts to the west and into [28] those areas, or shapes that you see now. So through our 70 hearings that we've had, and I'm not sure how many hearings were had in 2001, but through the 70 hearings that we had this time around, that we took in the concerns and wishes of the people in those areas and tried to draw those districts as much as possible. And Congressman Butterfield was very adamant that when he saw our first version of the map, he thought some changes would be made, and we abided by his concerns.

SENATOR NESBITT: And I understand that on District 1. But on District 12, what were the racial considerations that went into the formation of 12? That's the question.

CHAIRMAN RUCHO: There weren't any.

SENATOR NESBITT: Senator Brock?

SENATOR BROCK: I don't think there was any, but if you can repeat the question? I think the handout we were just passed out, I think if everybody got it, was the wrong one. The voter tabulation district was different. Senator Nesbitt, if you could repeat your question, I would appreciate it.

SENATOR NESBITT: I just asked what racial [29] consideration in the formation of District 12? SENATOR BROCK: There were not any.

SENATOR NESBITT: Okay, and what were the considerations in the formation of the fourth?

CHAIRMAN RUCHO: I can answer that. In the sense that District 4 was looking at Obama-McCain numbers as we were proceeding down.

SENATOR NESBITT: What were the racial considerations that –

CHAIRMAN RUCHO: There were no racial considerations.

SENATOR BROCK: None?

CHAIRMAN RUCHO: None.

SENATOR NESBITT: You didn't consider any racial consideration in either one?

CHAIRMAN RUCHO: You heard. It was strictly Obama-McCain numbers going in that area, there.

SENATOR NESBITT: Mr. Chairman, at this time I'd like to offer an amendment. I think they have it up there.

CHAIRMAN RUCHO: Okay. Let it be distributed to members of the Committee, please. Senator Nesbitt, when these maps get passed out, would you begin to explain your amendment.

[30] SENATOR NESBITT: Thank you, Mr. Chair. The amendment addresses something I noticed about this map immediately because of the impact it had on the west. But throughout this map, and I think it's been addressed in prior meetings here that there was an interest in taking and dividing all of the urban

areas in the state, that apparently you all noticed that some had been split over time and you just thought it was such a good idea you wanted to split all the rest of them, and pull them out of their contiguous areas.

And for instance, this thing will address one where Asheville is, obviously, the urban hub of the west. Hickory was actually originally split into three districts, although it's only 41,000 in population. Fort Bragg was split away from Fayetteville, which is an integral part of that city. Wilmington was split into two pieces. And for the life of me I don't understand why we want to do that. Clearly, you have communities of interest in terms of economic development, in terms of infrastructure, highways, Internet systems and everything that flow through urban centers. They tend to be the financial centers of these areas.

[31] And to dislocate them didn't seem prudent to me, I guess. And at the end of the day, I hope, not legal that when you just totally ignore communities of interest, or obviously try to disrupt communities of interest, hopefully someone will see a problem with that.

You held hearings after you cut out the city of Asheville out of the 11th by going all the way through McDowell to get there, and all the other areas, Rutherford up through that way, to snake in there. And I can't remember anybody that was for it that you heard from from the west. Now Senator Brock was up there and we couldn't see you, by the way. They didn't have you on TV. You were in the background back there but I heard you say one time, "I can't hear you because they're making so much noise."

SENATOR BROCK: I have a face for radio. But Senator Nesbitt, looking at your proposed district I

would say that, you know, listening to your comments, your comments are talking about the interests of these urban areas in these districts. Now, this past time of redistricting, we did not gain another congressperson, another congressman, [32] because of population growth. We should have. I mean, I think our numbers were very close and I think if they were made to count the military we would have had those numbers. But we did not.

Now, the interest that the citizens of North Carolina would like to have is their representation up in Congress. And we treated Asheville like every other urban center in North Carolina, where they would have two members of Congress, or perhaps three in some of our larger areas. But they would have that interest up in Washington. They would have more representation in Washington than they would with just having one person. And –

SENATOR NESBITT: Well, you were in Asheville to hear it up close and personal. Did anybody out there tell you they wanted to be in the 10th?

SENATOR BROCK: Yes, they did.

SENATOR NESBITT: At the hearing?

SENATOR BROCK: Yes.

SENATOR NESBITT: How many people?

SENATOR BROCK: Out of the people that we had to speak at that one – I only attended one at that – I think it was at least two people that attended that one meeting.

[33] SENATOR NESBITT: And how many people told you they didn't want that?

SENATOR BROCK: Well, we had lined up, we had over 51 people to sign in. However, most of those chose not to speak that day. So you're looking at, in our hearing numbers of the two and probably -oh, how many people did we have speak that day? Because I know I held the hearing over for – I remember leaving the campus about 10:45 that night so we kept the recordings going so everybody could hear. I wasn't going to shut off people from having their comments heard. So we all left there about 10:45 and we took him probably another four or five people afterwards. So we probably had about 12 or 13 to I think two that did not like the idea of Asheville being split, some concerns of legislative districts. But I believe of the speakers, it's probably in that area. But I don't know how many people were at your hearings in 2001 that also spoke, you know, spoke like that because I don't remember the hearings in 2001. So just an idea.

SENATOR NESBITT: Well, let me share with you that Senator Apodaca I think went out in the far west end he got an earful out there too. The people [34] of the mountain region don't like this. They feel like you have basically neutered them politically. They are fiercely upset about it. Our papers editorialized as strongly as you possibly could. The letters to the editor have been consistent and stout, and we'll get all those in the record for you. Not that it will affect anything.

CHAIRMAN RUCHO: Senator Nesbitt, what was done in drawing these very legal Congressional maps was to try to treat everybody fairly and equally.

SENATOR NESBITT: Well, when you treat everybody equally bad it's not necessarily a good thing, Mr. Chair. That's what I'm trying to point out. I pointed cut that in fact you'd cone all over the state and tried to dis-integrate urban areas by taking a

critical piece out of the region, and that's what I'm concerned about. And we think this map that I have sent forward, and all of the amendment incorporates this map, draws a good, concise district for the far western part of the state, it's what the people up there want and we would ask you to adopt this as an amendment to the map you have proposed.

And by the way, I just had to draw this, this [35] district as I understand it after the public hearings and after the editorials and after everybody said they didn't want to do it was actually revised, and you took more of Asheville. No? Yes?

CHAIRMAN RUCHO: Actually, that was a clerical error that was corrected with the 2A.

SENATOR NESBITT: So this is the same as the first map?

CHAIRMAN RUCHO: That's correct.

SENATOR NESBITT: Hopefully, you'll begin to understand why it's difficult to respond to your map, because it changes fairly regularly. And when I saw that, I mean the people in the mountains saw that as a total affront, so you may want to explain that you didn't mean it that way because when they speak and say we don't want you to do what you did and you come back and do more of it, it appears to be on affront, to the people up there. And of course you don't live there so it doesn't matter to you but it matters to those of us that do.

But I would move adoption of the amendment to amend the plan, and add this far western_ district.

CHAIRMAN RUCHO: Thank you. Senator Hise.

[36] SENATOR HISS: A question of the amendment's sponsor. First question I would have is could

you please explain for us what communities of interest you sought to preserve in the division of Rutherford County in your amendment?

SENATOR NESBITT: Well, Rutherford County was divided in the last map and that's the way it's been for 10 years, I believe. I believe that it was divided in the last map. And I'm getting a "yes" from the folks up there. And traditionally, if I could, I would go get the rest of Rutherford and Cleveland too because historically, in the 30 years I've been representing the western part of the state, they have been included with us in one way or another. I think the old 11th or whatever it was back then, maybe 20 years ago, even took Cleveland.

And the problem we've got is, to get the numbers right you've got to do something. And in the drawing of this map I told them to draw it off as straight as they could. I didn't want it to look peculiar. But it you want Avery and Mitchell in the 10th, then we can substitute. I'll be more than happy to let you substitute that, and put Rutherford and Cleveland back in the 11th. That would probably [37] fit pretty close.

SENATOR HISE: And follow-up question.

CHAIRMAN RUCHO: Follow-up, Senator Hise.

SENATOR HISE: In your opening remarks you had also talked about the area of Hickory and Catawba County was divided into three. In Catawba County, what's the differences in your division than in the current map?

SENATOR NESBITT: In Catawba County? I don't believe there's any difference. In the original map you

actually split Hickory three ways. There was part of it in the 11th. You fixed that in your map, I think.

CHAIRMAN RUCHO: Just for your knowledge, actually the annexation in Hickory crossed county lines, and they are in three counties. So there's only so much you can do when the municipality has done satellite annexation.

SENATOR NESBITT: That's correct. I'm just saying as a practical matter I can't remember if your first map went all the way through Caldwell, but I believe it did and it put that little piece that was in Caldwell over in the 11th, and they had some in the 10th and some in the 5th. And you all [38] fixed the part that was in the 11th. That's my recollection of the way the maps have gone. We did not change anything from your map, as regards Hickory. It's still in two districts, as I understand it.

CHAIRMAN RUCHO: Any additional questions? No? Senator Walters.

SENATOR M. WALTERS: Thank you, Mr. Chair.

Senator Brock, looking at the two maps, the Rucho-Lewis Congressional 2A map and the Nesbitt correctional map, would you agree that the Nesbitt map has a more compact viewing of it compared to the Rucho-Lewis Congress 2A?

SENATOR BROCK: I think looking at the Rucho-Lewis 2A is that Asheville gets the best of two congressmen, rather than just one. And I think when you're looking at interests and representation of the people in Buncombe County and primarily, Asheville, they will have two congressmen instead of one. And I think they will have a better interest in Washington than just being served by one person.

SENATOR APODACA: Mr. Chairman?

CHAIRMAN RUCHO: Yes, sir. Senator Apodaca?

SENATOR APODACA: You know, I know my colleague [39] from Buncombe County is one of the oldest rats in the barn around here. And I remember seeing something back in '92 where the majority party dug into Buncombe County, took a little swath down. And I'm also going back about 10 years ago, I think – correct me, Martin, if I'm wrong, I know you will, that Channel 13 did a deal were then Senator Metcalfe was raising Cain because there was a map put forward that divided western North Carolina into two distinct districts; one predominately Republican, one predominately Democrat, and that was an idea being tossed around down here then, so I don't think we're getting into new territory here.

And I know I shouldn't say this either but down in Henderson County we don't feel like we've got a whole lot in common with the city of Asheville. And it's just, you know, I don't – our map doesn't bother me that much. I know it ain't going to make them happy at home but the folks in Henderson County and Transylvania County kind of like this map that was drawn. So that's all I wanted to say. Thank you.

SENATOR NESBITT: The first thing is I don't recall either one of the instances you're talking [40] about and honestly, I would tell you if I did, but I don't recall it.

The second thing is the people in Asheville and welcome County are beginning to get the idea that Henderson County doesn't like Buncombe County and Asheville, because you're trying to take the water system, the airport, and redistrict Buncombe County

from outside our county and manipulate the group. And they've had about had all of that they want, too.

CHAIRMAN RUCHO: Are there any –

SENATOR APODACA: Mr. Chairman, I need to rebut that, please.

CHAIRMAN RUCHO: Yes, sir. Senator Apodaca.

SENATOR APODACA: Thank you, Mr. Chairman.

I know we all drive down to I guess, South Carolina to fly cut of the airport although half of it sits in Henderson County. I think we use it and pay our fees and everything. And also, if we want to get down to stealing water, I don't think that's a path we want to open and walk down in this body. Thank you.

CHAIRMAN RUCHO: Thank you, sir.

SENATOR BROCK: Thank you, Mr. Chairman. At [41] the appropriate time I would respect the Committee to vote against the amendment.

CHAIRMAN RUCHO: Any other discussion?

(NO AUDIBLE REPLY.)

CHAIRMAN RUCHO: All right. Motion_ to reject Nesbitt – excuse me?

SENATOR APODACA: I second.

SENATOR NESBITT: Mr. Chairman, if I can make just one last comment, it is an absolute shame when the people of a region start turning on one another and trying to disrupt one another. There's not enough in the mountains for us to fight over and we ought to all be pulling together trying to get the region up and out, and not be trying to divide it. And I don't know, the time I've been here and I don't know of another time that I can think of that this kind of stuff has occurred.

But it is occurring this session. And I am not blaming any particular member for it. I'm just saying it is occurring. It is outrageous. It is going to move our region backwards if we don't get our shoulders to the wheel and all get in the boat together, and get out of there.

CHAIRMAN RUCHO: Thank you, Senator Nesbitt.

[42] I've got a motion from Senator Nesbitt to accept it. Senator Brock asks for the Committee to vote against Senator Nesbitt's amendment, or Nesbitt Correction.

Seeing no additional discussion, all in favor of Senator Nesbitt's motion, please say aye.

(A CHORUS OF AYES.)

CHAIRMAN RUCHO: All against it, please say no.

(A CHORUS OF NOS.)

CHAIRMAN RUCHO: Nos have it. Thank you.

Any additional discussion or amendments on Rucho-Lewis Congress 2, which is Senate Bill 453?

(NO AUDIBLE REPLY.)

CHAIRMAN RUCHO: Seeing none, is there –

SENATOR BROCK: Mr. Chairman, I would like to move for a favorable report.

CHAIRMAN RUCHO: Senator Brock moves for a favorable report on the PCS 453. All in favor please say aye.

(A CHORUS OF AYES.)

CHAIRMAN RUCHO: All against?

(A CHORUS OF NOS.)

CHAIRMAN RUCHO: The ayes have it. Senate Bill 453 PCS has been adopted, and with a favorable [43] report.

If there are no other bits of info, questions or information on this, the Congressional portion is done. I will remind everybody that at 2:00 o'clock we will be meeting on the Senate maps. And as I said to you before, you can leave your papers here. The room will be locked up. And we will begin action in room 544.

Thank you. This meeting is adjourned.

(THEREUPON, AT 11:07 A.M., THE PROCEEDINGS WERE CONCLUDED.)

[1] NORTH CAROLINA SENATE SESSION

NORTH CAROLINA GENERAL ASSEMBLY

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Monday, July 25, 2011, 1:00 p.m.
Reported by Robbie W. Worley

Worley Reporting
P.O. Box 91447
Raleigh, NC 27675
919-870-8070

[2] LT. GOV. DALTON: The Senate will come to order. The sergeant at arms will close the doors. Members will please go to your seats. Members and guests in the gallery will please silence your electronic devices. Members of the Senate, please remember our chaplain, Peter Milner. He is recuperating from surgery this week, but we're happy to have today Mr. David Cumbie, who is the clergy assistant at Holy Trinity of Raleigh; that is Senator Hunt's church. Mr. Cumbie just moved to Raleigh from Charlotte, North Carolina, with his wife and his 11-month-old twins. All members and guests in the gallery will please stand as Mr. Cumbie brings us our prayer.

MR. CUMBIE: Let us pray. Almighty God, Heavenly Father, we thank you for the gift of this day. We thank you that you have created all things, that you sustain all things, and that you reign over all things. And I pray that by your grace you would bless these men and women, these leaders of our state. I thank you for their faithful and diligent service on behalf of the people of North Carolina, and I humbly ask that you might give them the courage and the wisdom and the foresight necessary for their duties. Lord, I pray [3] the peace of your holy spirit over them. I pray you would protect them and strengthen them, pray that for themselves,

their families, for their loved ones. And I pray all this in the name of Jesus Christ your son and the glory of your kingdom now and forever, amen.

LT. GOV. DALTON: Senator Berger of Rockingham is recognized for a motion.

SEN. P. BERGER: Thank you, Mr. President. The journal of Saturday, July 23rd, 2011, has been examined and is found to be correct. I move that we dispense with the reading of the journal and that it stand approved as written.

LT. GOV. DALTON: Without objection, the journal for July 23rd stands approved as written. Without objection, leaves of absence are requested and granted to Senators Brown, Meredith, Tucker and Stevens.

Members of the Senate, the chair is happy to extend courtesies of the floor this week to Ms. Robbie Worley, our court reporter. As a reminder, it is very important during this debate on redistricting to speak clearly into your microphone so the debate will be properly recorded. Also, members of the Senate, upon the motion of Senator [4] Harrington of Gaston County, the chair is happy to extend courtesies of the gallery to Dr. Ann Tippitt, the director of the Schiele Museum, and Dr. Alan May of the Schiele Museum, and their granddaughter, Sierra. Are you in the gallery today? Thank you for being here. We appreciate your attendance. (Applause.)

Senator Apodaca, to what purpose do you arise?

SEN. APODACA: Two motions, if I might, please.

LT. GOV. DALTON: You have the floor to make your motion.

SEN. APODACA: Thank you, Mr. President. I move that all bills voted out of the Senate through the

conclusion of business on Thursday, July 28, be sent to the House via special messenger.

LT. GOV. DALTON: Without objection, so ordered.

SEN. APODACA: Thank you, Mr. President. Second motion, I move that rules be suspended to the end that Senator Rucho may have his staff join him on the floor.

LT. GOV. DALTON: Without objection, so [5] ordered. That would be traditional.

Members of the Senate, we're to the calendar, public bills, second reading, Senate Bill 453. The clerk will read.

CLERK: Senate Bill 453, Rucho-Lewis Congress 2-A.

LT. GOV. DALTON: Senator Rucho is recognized to explain the bill.

SEN. RUCHO: Thank you, Mr. President, and members of the Senate. This redistricting process is well down to getting finished. We have a bit more work to do, and then we can proceed forward in getting the preclearance and ultimately be able to have the 2012 election process intact.

Mr. President, I'd like to make a statement in introducing this bill, if I may. We released – we released our first proposed Congressional redistricting plan called Rucho-Lewis 1 – Rucho-Lewis 1, on July 1st, 2011. We're confident that Rucho-Lewis 1 fully complies with all applicable federal and state requirements, federal and state legal requirements. We held public hearings on Rucho-Lewis 1 on July 7th, received many comments and suggestions regarding the initial proposed plan. In response to the [6] comments and suggestions we heard at those public hearings, we chose to release Rucho-Lewis Congress 2,

better known as Rucho-Lewis 2-A, which constitutes a revision of our original plan.

As we did in the first proposal, we met in Rucho-Lewis 2 the one person, one vote standard and zero deviation requirements imposed by federal law. We made several changes in the second proposed Congressional plan based on comments received during the public hearings and on the general – General Assembly website, and feedback from members of Congress.

One of our goals is to create more competitive Congressional districts. In fact, John Dinan, professor of political science from Wake Forest University, prepared an unsolicited report explaining how our initial proposed plan creates more competitive districts than the existing 2001 Congressional plan. Mr. Dinan's report is available for review on the General Assembly's web page at its redistricting link.

Professor Dinan explains that the allegations that we engaged in extreme political gerrymandering similar to what exists in the current versions of 13th, 2nd and 8th Congressional [7] Districts are overblown and inconsistent with the facts. For example, based on the results of the 2008 general election, Democrat Attorney General Roy Cooper carried 12 of the 13 districts in RuchoLewis 1 and all 13 districts in Rucho-Lewis 2-A. In both of our proposals, registered Democrats are a majority in three Congressional districts. There are no districts in which registered Republicans are a majority. In both proposals, registered Democrats outnumber registered Republicans in ten districts. Finally, in both proposals, the combination of registered Democrats and unaffiliated voters constitute a majority in all 13 districts. Thus, in both of the proposed plans, there are three strong Democratic districts. There are also ten

districts in which Democratic candidates have the potential to win without a single Republican vote, provided they convey a message that appeals to their own registered Democratic voters and unaffiliated voters.

The changes found in Rucho-Lewis 2 stem in part from comments we received regarding our initial proposal for Congressman Butterfield's 1st District. Changes that were made to the 1st District had a rippling effect on most of the [8] remaining districts. Some of our critics have suggested that the 1st District be eliminated from any new redistricting plans because of its shape. Those who have made this argument fail to understand that the 2011 General Assembly inherited the 1st District from prior General Assemblies, and that prior General Assemblies enacted the 1st District in order to comply with Section 2 of the Voting Rights Act.

For example, some of these critics are apparently unaware that the shape of the 1st District has been approved by the federal – by a federal district court as compliant with minority population compactness requirements for districts drawn to avoid liability under Section 2 of the Voting Rights Act. That's Cromartie versus Hunt. It would be legally imprudent to dissolve this district.

However, we must alter the 2001 version of the 1st District because of two flaws. First, the current 1st District is underpopulated by over 97,000 people. Second, it does not include a majority black age voting – black voting age population, better known as BVAP, as required by Section 2 of the Voting Rights Act. See Strickland [9] and Barrett – Bartlett, excuse me. Thus, any revision of the 1st District requires the addition of over 97,000 people. Also, the added population must include a sufficient number of African-Americans so

that the 1st District can re-establish as a majority black district.

Prior to our release of the Rucho-Lewis 1, we discussed both of these problems with Congressman Butterfield. We believe that he understood and agreed that his district would be drawn in either Wake or Durham County to cure the district's equal population and voting rights deficiencies. We understood that Congressman Butterfield preferred that his district be drawn in Wake instead of Durham. We also discussed with Congressman Butterfield that drawing his district in Wake County may result in the withdrawal from his district of one or more counties covered by Section 5 of the Voting Rights Act.

Our understanding of Congressman Butterfield's preferences was reflected in our initial version of the 1st District found in RuchoLewis 1. During our public hearings, several speakers expressed concern about our decision to include several counties covered by Section 5 of [10] the Voting Rights Act in the 1st District. Despite these complaints, we have received only one alternative plan that would bring the 1st District back to a majority black level. This sole proposed alternative drew the 1st District into Durham County instead of Wake.

This plan may also – this plan also included all of the Section 5 counties currently found in the 2001 version of the 1st District. Following the public hearing, Congressman Butterfield issued a statement disputing our understanding of our prior discussion with him. Thus, as we now understand Congressman Butterfield's position regarding revisions of the 1st District, it appears that he may have no preference between drawing his districts into either Wake or Durham Counties. We also assume that Congressman Butterfield would support keeping the black

population in Section 5 counties at similar or higher levels as compared to the amount of black population in Section 5 counties under the 2001 version of the 1st District.

Based upon this feedback in Rucho-Lewis 2, we have drawn the 1st District into Durham County as opposed to Wake. There is historical [11] precedent for a district that combines Durham with counties located in eastern North Carolina. Moreover, our revised version of the 1st District brings it up to ideal population with other districts and re-establishes it as a majority black district.

While our initial version of the 1st District was fully compliant with Section 2 and Section 5 of the Voting Rights Act, our second version includes populations from all of the Section 5 counties found in the 2001 version of the 1st District. Moreover, the total BVAP located in Section 5 counties in Rucho-Lewis 2 exceeds the BVAP currently found in the 2001 version.

Some of our critics have complained about the appearance of our proposed 12th District. Again, these critics fail to understand that we inherited District 12 from prior General Assemblies. Further, this district has been approved by the United States Supreme Court as a district lawfully drawn to elect a Democrat. That is Easley versus Cromartie.

The district has also been precleared under Section 5 of the Voting Rights Act on at least two prior occasions. In adopting the 12th [12] District, we intended to accommodate the wishes expressed by Congressman Watt as we understood them to continue to include populations located in Mecklenburg, Guilford and Forsyth Counties. Our revised version of this district makes it more compact and continues the district as a very strong Democratic district. Our revision of the 12th District is based on whole vote

tabulation districts, and that is VTD's, that voted heavily for President Obama in the 2008 election.

We have been accused of illegally packing black voters into the 12th District and illegally diluting the influence of black voters. We drew this district to comply with federal law. Packing was defined in Voinovich versus Quilter as, the court said, a minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, that group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a supermajority, it will be assured only two candidates.

We have repeatedly asked our critics for any case law that supports their argument or any [13] alternative definition of packing, and none has been provided. By continuing to maintain this district as a very strong Democratic district, we understand that the districts adjoining the 12th District will be more competitive for Republican candidates.

The 4th District was created in a similar way as to the 12th. It, too, was constructed based on whole VTD's, and based on 2008 presidential general election. It has been created as a strong Democratic district as it has proven to be in the past. Any changes to its shape were caused by shifts in population within and around the existing districts.

I urge the Senate to pass the proposed fair, legal and competitive Rucho-Lewis Congress 2A plan. This will allow for preclearance and for the 2012 election schedule to be maintained. Thank you, Mr. President.

LT. GOV. DALTON: Senator Jones, for what purpose do you arise?

SEN. JONES: To ask Senator Rucho a question.

LT. GOV. DALTON: Senator Rucho, do you yield?

[14] SEN. RUCHO: Yes, sir.

LT. GOV. DALTON: He yields.

SEN. JONES: Thank you, Senator. You have a copy of the July 22nd letter from 1st Congressional District Congressman G.K. Butterfield. Have you looked at that?

SEN. RUCHO: Yes, sir.

SEN. JONES: Do you have a problem with that being part of the record?

SEN. RUCHO: I couldn't hear you, sir.

SEN. JONES: Do you have a problem with that being part of the record?

SEN. RUCHO: No, sir. That would be fine.

SEN. JONES: All right. Mr. President?

LT. GOV. DALTON: Senator Jones, you can send that forward.

SEN. JONES: Okay. Everyone has a copy on their desk of the letter, and we can send that forward for the record. Does this need to be read in or not?

LT. GOV. DALTON: We can adjourn – when we adjourn, we'll adjourn it subject to the reading in of that, and I will direct that it be attached to the journal minutes of this session.

[15] SEN. JONES: Thank you, sir.

LT. GOV. DALTON: Further discussion and debate? Senator Graham, for what purpose do you arise?

SEN. GRAHAM: To read in a statement from Congressman Watt in reference to the 12th Congressional District. I can read it in or also submit it as a part of the official record.

LT. GOV. DALTON: I don't know that I have that one up here. I don't know how long it is. Why don't we submit it as part of the official record and have it read in at the conclusion? It looks like there may be others of these coming, so.

SEN. GRAHAM: Thank you.

LT. GOV. DALTON: Go ahead and send it forward, Senator Graham, if you would. Senator Blue, for what purpose do you arise?

SEN. BLUE: Will Representative – Senator Rucho yield for a question?

LT. GOV. DALTON: Senator Rucho? He yields.

SEN. RUCHO: Yes, sir.

SEN. BLUE: Senator Rucho, you indicated that there was historical precedent for Durham being part of the 1st Congressional District. Do [16] you have any record of it ever extending to the Albemarle Sound?

SEN. RUCHO: Senator Blue, the districts are in the record under the NCGA website, and it covers a good many of the eastern counties.

SEN. BLUE: Further question?

LT. GOV. DALTON: Follow-up?

SEN. RUCHO: Follow-up.

SEN. BLUE: Are you referring to the configuration of the old 2nd Congressional District back in roughly the '70s and '80s, immediately after the one person, one vote doctrine took on real meaning, when that district may have gone as far east as Edgecombe County?

SEN. RUCHO: I believe, at least my recollection, Senator Blue, that that was, I believe, in '91 when that was included in there. That's my best recollection.

SEN. BLUE: Another question.

LT. GOV. DALTON: Follow-up.

SEN. BLUE: In reference to the 1st Congressional District, are you familiar with the concept of retrogression when it comes to Section 5-mandated districts?

SEN. RUCHO: Yes, sir, I am.

[17] SEN. BLUE: Follow-up?

LT. GOV. DALTON: You may continue for a line of questioning. We'll see where it goes.

SEN. BLUE: If you're familiar with that concept which says that you cannot take a district below the composition of that district based on the last redistricting, then if a district is down at, say, 40, 45 percent, under Section 5, then from a retrogression standpoint, you could create a 45 percent district and be in compliance with the Voting Rights Act. Is that correct?

SEN. RUCHO: Senator Blue, I – if you have – and I know you have been engaged in the debate and discussion, but we followed Strickland versus Bartlett, which requires a majority-minority district, and that's what we complied with.

SEN. BLUE: And so, it's your position that the concept of retrogression, then, is forever and in perpetuity, 50-percent-plus, rather than the idea that a district doesn't have to go beyond the current racial makeup of that district to be in compliance with the Voting Rights Act?

SEN. RUCHO: Senator Blue, Congressional District 1 has Section 2 requirements, and we fulfill those requirements.

[18] SEN. BLUE: Another question, Mr. President?

LT. GOV. DALTON: Follow-up.

SEN. BLUE: Regarding Congressional District 4, do you have any historic record that Congressional District 4, which is based in the Research Triangle, including Wake and Durham Counties, ever extended to Cumberland County?

SEN. RUCHO: Just as we explained in the statement and during the debate during the other -- during the Redistricting Committee meetings, there was a shift, and it was accommodating due to the fact that there were population shifts. We added 1.5 million new people to the state of North Carolina, and this is the sequelae of that effort.

SEN. BLUE: Another question. The 4th Congressional District was one of those districts that was overpopulated; is that right?

SEN. RUCHO: I don't recall exactly, but we can check on that for you.

SEN. BLUE: But you know that it did not go to Cumberland County, and as a follow-up question, the population that you added in Cumberland County to the 4th Congressional District is overwhelmingly African-American. What went into [19] your decision to put the African-American population in Cumberland County into the 4th Congressional District?

SEN. RUCHO: Senator Blue, the drawing of the 2nd Congressional District, as I mentioned to you in the statement, was based on the fact that we were looking at –

SEN. BLUE: I'm sorry if I said 2nd. I meant 4th. I'm sorry. I meant 4th.

SEN. RUCHO: All right. The makeup of the – and construction of the 4th Congressional District was

based on the fact that we were looking at presidential election numbers, and therefore built it on that basis.

SEN. BLUE: And that's the same logic that you would contend that you used in putting the African-American population in Wake County in the 4th Congressional District, where it wasn't before this effort?

SEN. RUCHO: I'm not sure I can change my statement more than what I've already said. That's how we constructed it in the 4th.

SEN. BLUE: Well, let me ask you specifically. When you decided to take the African-American community in Wake County, [20] primarily Raleigh, southeast and east Raleigh, to put in the 4th Congressional District, what was your rationale for that?

SEN. RUCHO: It was following what we talked about in the statement, and that was looking at the presidential election in 2008 numbers.

SEN. BLUE: Did you look at other precincts that did not have majority black populations and determine whether they voted for Obama in 2008?

SEN. RUCHO: We just looked at the numbers that were there related to the 2008 election numbers for President Obama. I'm not sure what else you want from me on that question.

SEN. BLUE: I want to know – in a follow-up, Mr. President. I want to know what other precincts – if the vote for president was the operative vote to make it a majority Democratic district, did you look at other precincts that were not populated overwhelmingly by African-Americans that voted for Obama in 2008, and make an attempt to put them into a Democratic district, namely, the 4th?

SEN. RUCHO: All we used as the standard was the election of President Obama's numbers in [21] that building and construction of District Number 4.

SEN. BLUE: Follow-up, Mr. President?

LT. GOV. DALTON: Follow-up.

SEN. BLUE: And so, you don't know what precincts, whether you looked at precincts other than the African-American precincts in the southern end, in Cumberland County, Fayetteville, and the African-American precincts in Wake County, Raleigh, to determine which ones to put in the 4th District to make it more Democratic based on its performance for President Obama?

SEN. RUCHO: Senator Blue, to repeat, and go along with the statement that we made, we were looking for heavily Democratic voting precincts, and that's how that District Number 4 was constructed.

SEN. BLUE: And when did you determine that they were African-American precincts? Before you looked or after you looked for the Democratic performance?

SEN. RUCHO: We didn't consider race, Senator Blue. We were looking at strictly the numbers on the presidential election in 2008.

SEN. BLUE: And since the written [22] transcript can't reflect it, I believe you've been consulting with counsel to answer each one of my questions. Is that right?

SEN. RUCHO: Yes, sir. That's correct.

SEN. BLUE: Mr. President, I'd like to send forth an amendment.

LT. GOV. DALTON: The Senator can send forth his amendment. Do members have copies?

SEN. BLUE: They're being passed out now.

LT. GOV. DALTON: Okay. As they're being passed out, let me take care of this. Upon the motion of Senator Newton of Wilson, the chair is happy to extend courtesies of the gallery to the Boy Scout Troop 6 of the First United Methodist Church of Wilson. I think they're right back here in this corner. Thank y'all for being here. (Applause.)

Does everybody have a copy of the amendment? We don't.

SEN. BLUE: I just saw staff go out. They may have them outside. But I've given them the high sign to distribute them.

LT. GOV. DALTON: Okay. Let's wait until they're in here, and then we'll take it up.

(Pause.)

[23] Senator Blue, do you have the original copy of the amendment? (Pause.) It's my understanding that members now have copies. The clerk will read the amendment.

CLERK: Senator Blue moves to amend the bill.

LT. GOV. DALTON: Senator Blue is recognized to explain Amendment 1.

SEN. BLUE: Mr. President, I'm prepared to do that, but just one follow-up to the last question I asked Representative Rucho. He answered it, but I need to know the name of his counsel who is advising him, since he's not a legislative employee, for the record.

LT. GOV. DALTON: We'll get that after the debate. I promise you we'll come back to get that.

SEN. BLUE: Thank you.

LT. GOV. DALTON: You have the floor to present the amendment.

SEN. BLUE: Mr. President, ladies and gentlemen of the Senate. What I have had passed out to you is just a shifting around of precincts between the 2nd Congressional District and the 4th Congressional District. Let me tell you what I [24] have done there, and you will appreciate, at least, what I am trying to do. When we started this session in January, we told the voters of this state that this was going to be a session about creating jobs. And I want you to know that there is not a greater job creation engine in North Carolina than the activity happening in the Research Triangle Park and the 4th Congressional District. Nowhere in this state are the jobs for the future being created at the rate and at the volume as are being created in the Research Triangle Park and the research universities in the 4th Congressional District.

Now, if we're about jobs, we will subjugate a little bit our feelings about politics for the benefit of the citizens of North Carolina. Jobs that create – jobs that compete not only across the United States but across the world, whether it's entities like Cree, that's figuring out how to light the world a new way, or whether it's some of the bio industries developing out in the Research Triangle Park, or the health-related medicine research things in laboratories at Chapel Hill and at Duke and at N.C. State and across this region.

[25] A lot of the reason for the concentration of these jobs in the Research Triangle is because of the visions of state leaders and federal leaders since Luther Hodges was governor in the 1950s. And, you know, the amazing thing, for the most part, this conglomeration has been part of the same Congressional district. Sometimes, the old 2nd, other times, the old 4th. Over the last 20 years, its been in the Congressional district that a lot of the research dollars have come. I don't

know whether you know it, but between the institutions in the 4th Congressional District, between those institutions, this past year alone, more than a billion dollars in research money was brought into this area, between the activities in the Park, at RTI, Research Triangle Institute, Research Triangle, Incorporated, at Duke, Chapel Hill, N.C. State, N.C. Central, and the science-based things happening in this Congressional district.

And, you know, the amazing thing, even whether it was David Price representing it, or Fred Heineman, or Bill Cobey, or various other people, some Republican, by the way, they've had their focus on what would help create more jobs in these institutions in the 4th Congressional District.

[26] This map shows you one of the most compact Congressional Districts in the state, and it's compact because it's centered in Wake County, Durham County and Orange County. Currently – and Chatham, below the river. And that's what it would be, pretty much, in this map.

Now, one of the things that Senator Rucho did, with . dvice of counsel, I guess, is switch it up, and he brought the 4th Congressional District a little bit further east, because that's what he had to do to pick up the African-American community. But then he takes it, and takes it 40, 50 miles west from Durham, Chapel Hill, over into Alamance County. Then, he goes all the way down to Cumberland County, picking up Chatham, other parts of Chatham. Picking up Harnett County, picking up Cumberland County. Very important areas of the state, but the focus of interest in those counties is not in the development, as we see at the Research Triangle Park, and in focused job creation.

The Congressman from the 4th District has played a great role in that increased funding and that increased job creation that makes us competitive internationally. So what this map does [27] is, simply takes us back to the Research Triangle district, so that we can again focus on this job creation that all of you say is so important.

Rucho-Lewis 2-A ignores the concept of compactness. You know, you've got a Congressman who can, within 20, 30 minutes in either direction, be all over his district, important meetings with people from around the world, people from the region who are trying to create jobs.

The 4th Congressional District in Rucho-Lewis 2 does not include one, single whole county. It snakes from Burlington to Fayetteville, Raleigh to Burlington, and just takes up a ridiculous amount of geography when it's not necessary.

Now, Chairmen Lewis and Rucho indicated, at least from what I read, that it was their goal to develop fair and legal Congressional districts, and they have asserted that a majority of Tar Heel residents would find these districts to be fair to North Carolina voters. A plan that divides and confuses voters is not fair, and that's what Rucho-Lewis does.

If you would simply compare this new 4th District, which is on – on your map would be in the – I don't know, some kind of olive-looking [28] color, sort of a shade of green somewhat, and see what it does as compared with that district in the Rucho-Lewis 2-A plan, you'll see what I'm talking about.

They also claim that they have no choice but to split Durham in order to comply with the provisions of the Voting Rights Act. Well, that's not true, but even if it were true, bringing the 1st Congressional District into

Durham doesn't mean that the county has to be split four different ways. That is the core of the Research Triangle Park. Most of it is contained in Durham County. The overwhelming majority of the Research Triangle Park is in Durham County.

Rucho-Lewis puts about 60 percent of Durham County in the 1st Congressional District, taking it away from anything having to do with this job creation engine that I've mentioned to you. But it then divides the other 40 percent into three separate Congressional districts. About a quarter goes to the 4th, a little more than 10 percent to the 6th, which seems rather crazy, and leaving just 1 percent in the 13th, which is a new district they've created here in Wake County. It doesn't make sense for the 4th to take a detour 20 more [29] miles, as I said, over into Alamance County, and then 50 miles down into Fayetteville.

When they released Rucho-Lewis Number 1, they asserted that the urban communities of Fayetteville and those of Orange and Durham County were similar and ought to be joined. Well, with this map, they've taken the heart out of the urban community in Durham County, so why should it be joined to Cumberland County now? It stands to reason on its head in their explanation. It puts an absolute falsehood to it.

I would suggest to you that if we were to adopt this map that I've sent forth, you do nothing but improve the possibilities of continuing this job creation engine in the 4th District and in the Research Triangle Park.

If you look at Rucho-Lewis again, you'll see that the way they went to Fayetteville bisects Harnett County. It doesn't make sense to me. It puts the western half of Harnett County in the 2nd. In the 2nd, now, which is a district that's tending to go east, and it puts the

eastern half in the 4th, which is a district that's tending to go south. You explain to me the logic in that.

Worse still, it puts Fort Bragg in the [30] 2nd, but it isolates it from the remainder of Cumberland County by a strip that goes into the 4th. It takes away from the things that naturally ought to be associated with it. Its employees, a substantial number of whom are civilians who don't live on the base.

And so, this amendment would revise Rucho-Lewis 2-A to make it simple and straightforward. It would take the two-way swaps between the 4th and the 2nd; that's the only thing that it really implicates, and three other Congressional Districts, a little bit in the 2nd, a little bit in the 6th, and the 13th. It makes all of them more compact. It limits the number of split counties to what's absolutely necessary to reach zero deviation. All told, three counties, Alamance, Harnett and Cumberland, are put back together as whole counties. And none of the remaining counties, Wake, Durham, Orange or Chatham, would be split more than two ways.

It makes sense, my friends, as is the case with the Nesbitt amendment that we saw in the committee last Thursday, and that I guess you will see on the floor. This amendment seeks to fix only those portions of Rucho-Lewis that are necessary to [31] fix the 4th. It doesn't bother the other districts; it doesn't do anything except make this conglomeration a little more attractive, a little more compact, and a little more toward addressing the communities of interest, and it takes out the minorities that have been put in down in Cumberland County solely because they are minorities, not because of the way they vote, or the way that they voted for Obama in 2008.

This amendment is about ensuring that the people of North Carolina get the best possible service from

their elected members of Congress. That's why we send them to Congress, to be of service to the people who elect them, and this amendment goes toward doing that. It makes all the districts more competitive. But, just as in RuchoLewis 2-A, if you look at the statistics on it, the 2nd, the 6th and the 13th Congressional Districts still will be Republican by a wide margin, that is, McCain would have won them all, and the 4th Congressional District still would be Democratic, if that's the goal that you're trying to achieve, create a Democratic district.

And if the goal of Messrs. Rucho and Lewis is to develop districts that are fair to [32] North Carolina voters, as they say they've set out to do, then they, too, will find that this map more clearly and more directly does it than Rucho-Lewis 2. Mr. President, I move the adoption of the amendment, and I'd like to, at this time, ask Senator Rucho a question.

LT. GOV. DALTON: I'm not going to allow it right now. Well – it would be appropriate. Senator Rucho, do you yield for a question?

SEN. RUCHO: Not at this time, sir.

LT. GOV. DALTON: Okay. Senator Rucho says that he does not yield, but before we go any further, for the record, let me state that Mr. Brent Woodcox is the redistricting counsel to Senators Berger and Rucho, at least I'm informed that by Senator Rucho, and it's my understanding he is an employee of the State of North Carolina employed here in the legislature. Courtesies of the floor are extended to him.

Senator Blue, you still have the floor.

SEN. BLUE: Just so that I understand it and won't stand up unnecessarily, is Senator Rucho refusing to yield on my question now, but does that mean that he won't yield to my questions about this amendment?

[33] LT. GOV. DALTON: It's up to him whether he yields now or later. Senator Rucho, do you yield to a question?

SEN. RUCHO: It will be later, sir.

LT. GOV. DALTON: It's my understanding

he would yield later as we get into the debate.

SEN. BLUE: On this amendment?

LT. GOV. DALTON: That's the way I understood the answer. Senator Apodaca, for what purpose do you arise?

SEN. APODACA: Mr. President, I need to make a motion, please.

LT. GOV. DALTON: The Senator has the floor to make his motion.

SEN. APODACA: Mr. President, to allow all senators to review and consider the amendment just offered, I move that the Senate do now recess for 15 minutes, subject to additional extensions as necessary.

LT. GOV. DALTON: Without objection, Senator Nesbitt, for what purpose – okay. Let me guess; you're going to have an announcement. Okay. I'm going to accept the mo – without objection, I'm going to allow the motion, but we're not in recess yet. Any other announcements before we go [34] to recess?

SEN. NESBITT: Yes, Mr. President.

LT. GOV. DALTON: Senator Nesbitt, you have the floor.

SEN. NESBITT: Yes, Mr. President. The Democrats will caucus in their normal room.

LT. GOV. DALTON: Okay. And, Senator Apodaca, do you want to make an announcement?

SEN. APODACA: Yes, sir, Mr. President. The Republicans will meet in our normal room.

LT. GOV. DALTON: Okay. Now, members, what I'm going to do, I'm going to make that recess subject to the reading in of the documents which I've ruled will be attached to the journal. So the Senate will stand in recess until 4:05, subject to that condition. Excuse me, 2:05.

(RECESS, 1:50 - 2:05 P.M.)

(Read during recess.) CLERK: Message submitted by Senator Ed Jones, to the Honorable Bob Rucho, North Carolina Senate, the Honorable David R. Lewis, North Carolina House of Representatives, Re: Joint Statement of Senator Rucho and Representative Lewis regarding the release of Rucho-Lewis Congress 2, July 19, 2011.

"Dear Chairmen Rucho and Lewis: I write [35] in response to the joint public statement issued on July 19, 2011, in which you suggest that the basis for your revisions to the initial Congressional redistricting maps were made principally to meet the requirements of the Voting Act – the Voting Rights Act and to accommodate my personal preference with regard to the 1st Congressional District. It is regrettable that you would use the Voting Rights Act and my objection to the removal of Gates, Washington, Beaufort, Craven, Jones and Wayne Counties to justify wholesale changes to the proposed Congressional map.

"The letter to which you referenced did indeed voice my strong opposition to the removal of Section 5 counties. I was then, and remain, adamant that you restore the missing counties to District 1 to avoid retrogression and continue the legal protection afforded minority voters in Section 5 counties. These very concerns were also expressed during the public

comment period by numerous voters from the affected counties and others across the state. Unfortunately, the revised plan does not fully restore the Section 5 counties, but instead, extracts the African-American voters from their communities and [36] needlessly dissects affected counties, thereby reducing their collective influence. Additionally, the amended plan unsuccessfully packs new African-American voters from counties not covered by Section 5 of the Voting Rights Act into District 1.

"From the beginning, I simply asked that you start with my current district and add 97,500 people to comply with the one person, one vote requirements in a manner that would comply with the Voting Rights Act. I never asked for Wake, Durham or any other county to be added to District 1. Without having fully studied the Census data, I acknowledge that the population deficit might require consideration of urban areas. However, we now know that the numbers are such that District 1 can be preserved to fully encompass its historic, natural eastern North Carolina orientation. It is indeed possible to draw the 1st District in a way that complies fully with the Voting Rights Act without violating the general principles of redistricting, without packing African-American voters to dilute their voting strength, and with full respect for established communities of interest.

"Using the Voting Rights Act as a [37] justification to advance partisan goals in the rest of the state is unconscionable and mocks the very spirit and purpose of the law. The voters in District 1 and the citizens of our great state deserve better. I urge the committee and the members of the North Carolina General Assembly to heed the concern expressed by the public and honor legal protection designed and enforced to protect minority voters. Thank you very much. Very truly yours, G.K. Butterfield, Member of Congress."

Statement of Congressman Mel Watt regarding proposed Rucho-Lewis Congress 2 plan. July 21st, 2011, submitted by Senator Graham:

"I am submitting this statement to express my serious concern about the Rucho-Lewis Congress 2 plan recently proposed as a substitute for the Rucho-Lewis Congress 1 plan. First, I wish to reiterate all comments I made in my statement submitted and read into the record by Senator Malcolm Graham at the public hearing on July 7th, 2011, about the Rucho-Lewis Congress 1 plan. All my comments are equally applicable to the Rucho-Lewis Congress 2 plan, and I want to make it clear that any statement or implication that either plan was drawn to accommodate the wishes that I [38] expressed is inaccurate and untrue. The Rucho-Lewis Congress 2 plan fails to address any of the concerns I expressed about the composition of Congressional District 12 in the Congress 1 plan, and in fact heightens these concerns.

"Plan 1 proposed to increase the African-American population in the 12th District from approximately 40 percent to over 50 percent. I have repeatedly expressed to Senator Rucho my belief that increasing the African-American population in the 12th District is not required, justified or sanctioned by the Voting Rights Act. The Voting Rights Act, which I was instrumental as a member of the House Judiciary Committee and as a chairman of the Congressional Black Caucus to get Congress to reauthorize and extend, was designed to counteract the ethnic and racially polarized voting and level the playing field for African-American candidates and voters. It was not, as several court decisions have indicated, designed to create racial ghettos in which African-American candidates are given inordinate and unreasonable election advantages.

"Plan 2 heightens the concerns I expressed to Senator Rucho about packing even more [39] African-Americans into the 12th District than plan 1 proposed. Plan 2 would increase the number of African-Americans in the 12th District from 370,687, to 372,326, and increase the number of African-Americans of voting age from 268,871, to 269,987. This will have the effect of making the 12th District and adjoining districts less, not more, competitive.

"To maintain, as the joint statement of Senator Bob Rucho and Representative David Lewis regarding the release of Rucho-Lewis Congress 2 does, that maintaining the 12th District as a very strong Democratic district will make adjoining districts more competitive for Republican candidates is seriously in error. I encourage the State House and Senate to adopt a more balanced plan that reflects the true interests of North Carolina voters. Neither plan 1 nor plan 2, in my opinion, meets the criteria stated by Senator Rucho and Representative Lewis, nor do they established legal standards. Senator Malcolm Graham, for the Honorable Congressman Watt."

LT. GOV. DALTON: The Senate will come back to order. Members will please take their seats. [40] Senator Blue, had you completed your explanation?

SEN. BLUE: I have, Mr. President.

LT. GOV. DALTON: Okay. Thank you. The floor is now open for debate. Let me get it on the board. The floor is now open for debate on Amendment 1. Senator Stein, for what purpose do you arise?

SEN. STEIN: To see if Senator Rucho will yield for a question.

LT. GOV. DALTON: Senator Rucho, will you yield?

SEN. RUCHO: I will yield for a question, sir, not a statement.

SEN. STEIN: Thank you, Senator Rucho. You had said in your initial statement that one of the reasons why District 4 – District 4 looks like it does is, in order to comply with the one person, one vote provision of the U.S. Constitution. And then, when asked about whether it was overpopulated or underpopulated, you said you didn't know. What I've discovered is that District 4 is overpopulated, as it's currently drawn, by 93,379 people, which means that it has to lose 93,000 voters in order to be compliant with one person, [41] one vote. District 4 also currently represents the four counties that are in Senator Blue's amendment, Chatham, Orange, Durham and Wake. My question to you is, why, if it is losing nearly 100,000 people, have you gone from a compact, cohesive, four-county district to a seven-county district spread across the center of the state?

SEN. RUCHO: Senator Stein, and I'm sure you attended a number of the public hearings and the statements that Representative Lewis and I have put out. I think its been completely clear as to how we drew that map based on the – strictly on the election results on the presidential election, and at no point was race ever considered part of that. And I'm not sure how else I can explain that. You were in the committee meeting, and you've had the same questions answered.

SEN. STEIN: Mr. President, I want to debate the amendment.

LT. GOV. DALTON: Senator Stein has the floor to debate the amendment.

SEN. STEIN: I failed to hear an answer about how you go about shrinking a district of four counties, when you're in that process of shrinking, how you somehow

end up with seven counties. That 42] is addition to me, not subtraction. Essentially, what this map does, if you look at the 4th, it's an egg. It's got the most compact, cohesive, coherent district in the entire state, and y'all have splattered that egg in eastern North Carolina. I support this amendment to restore the integrity of the 4th District.

LT. GOV. DALTON: Further discussion and debate?

SEN. BLUE: Mr. President?

LT. GOV. DALTON: Senator Blue, for what purpose do you arise?

SEN. BLUE: I think Senator Rucho said he would yield for some questions?

LT. GOV. DALTON: Senator Rucho yields for a question.

SEN. RUCHO: Mr. President, I will yield for a question, not a statement.

LT. GOV. DALTON: Senator Rucho, you yield for a question. He will state his question.

SEN. BLUE: Senator Rucho, you indicated that when you decided to go down into Cumberland County, you were going after the people down there who had voted for Obama, or a larger percent voted for Obama in the 2008 election. Could you tell me [43] how you can determine from a voter – a VTD, a voter file, that is coterminous with precincts, from what I've been able to tell for the most part, who in that precinct or that VTD voted for president, and who didn't, or who they voted for for president?

SEN. RUCHO: Senator Blue, you continue to seem asking the same line of questions, even though most of them are statements which I don't agree with as your premise. So I'll just say to you again that this map on District Number 4 was drawn following the election

results on the presidential election in 2008, and I'm not sure how else we can explain that any clearer. Thank you.

SEN. BLUE: Will he yield for one follow up?

LT. GOV. DALTON: Follow-up?

SEN. RUCHO: Another follow-up question, sir.

SEN. BLUE: Senator Rucho, what I'm saying is that in listening to the explanation from our guy in IT on Thursday, and doing some independent research, it appears that the VTD, the voter tabulation district, in Cumberland County, most of them, at least the ones that I've looked [44] at, correspond to the precinct. And if I'm incorrect in that with regards to the voter tabulation districts you used in making District 2 and District 4, correct me. But is there a way that you can go into a VTD, if that VTD is synonymous with a precinct, say, in Fayetteville, Cross Creek Precinct Number 1, I believe it would be, is there a way that you can go into that precinct, if it is synonymous with a VTD, and tell who in it is black and who in it is not black, and which way they voted in a particular election?

SEN. RUCHO: Senator Blue, it's not an issue of race. I've told you time and again, that was not how the map was drawn. It's a map based on the VTD's of the citizens of the district that voted heavily for President Obama in the 2008 general election, and I can't make that answer clearer to you. Apparently you don't like it, so sorry.

LT. GOV. DALTON: Come to order. Senator Blue has the floor to debate the amendment.

SEN. BLUE: You're right, Senator Rucho. I don't like it, and it's not that I don't like it because of politics; I don't like it because I think it borders on

conduct that most of us would [45] condemn and most of us thought we had moved away from. But I'll just point out to the membership, in Cumberland County, there are VTD's that are split. Now, it may be coincidence. I don't know. I mean, strange things happen. I used to believe in all kinds of Easter bunnies and other kinds of things, so it may be a basis for it.

There are precincts that are split. And all of you are savvy politicians; you know you can't tell how the vote in one precinct breaks out based on race, unless somebody tells you. And coincidentally, when Districts 2 and 4 are split, all of the black people in a VTD, or a significant number, are put in the 4th District, and all of the white people are put in the 2nd District. Now, you can't do that based on how they performed in the presidential election. You do that by looking at who you're trying to move, and that becomes your reason for moving them, not how they voted in the presidential election.

And I would submit to you that throughout the day, you're going to see instances where one's color was looked at to determine what district he would go in, not so much that one voted a particular way in a presidential primary, or [46] presidential election. I'd ask you to adopt this amendment.

LT. GOV. DALTON: Senator Rucho, for what purpose do you arise?

SEN. RUCHO: To debate the amendment. LT. GOV. DALTON: You have the floor to debate the amendment.

SEN. RUCHO: Mr. President, Senator Blue may have a different perspective on this, but I will tell you that the Rucho-Lewis Congressional Map 2-A, and specifically the District Number 4, was drawn with complete regard of federal and state law. It meets

those requirements, meets the requirements that were allowed for preclearance, and I recommend that we oppose this amendment.

LT. GOV. DALTON: Further discussion and debate?

SEN. MCKISSICK: Mr. President –

LT. GOV. DALTON: Senator McKissick, for what purpose do you arise?

SEN. MCKISSICK: To speak on the amendment.

LT. GOV. DALTON: You have the floor.

SEN. MCKISSICK: As someone who represents Durham, and right now, all of Durham is [47] contained within the 4th Congressional District, I can honestly state that since this proposed plan was published and released, I've not run into a single person who wants to see Durham divided up into four different Congressional districts, and right now, we're dividing it between the 13th, the 1st, the 4th, and the 6th. If you look at the compactness of the district the way it is today, you look at the communities of interest that exist today between the academic institutions, such as Duke University, North Carolina Central University, you have North Carolina State, which is right here adjacent as well, research institutions. If you look at the Research Triangle Park, as Senator Blue so eloquently pointed out in terms of being a job creation engine, those community interests are very nicely defined.

Right now, we're taking a district that has strong communities of interest, and we're tearing it apart. And we have pieces of it from Alamance County that are uniquely rural, and while they may be beautiful areas, they have very little in common with places like the city of Durham, or places immensely urban like the city of Raleigh. And to see a district that is so compact,

which has [49] defined, concise communities of interest, and to see it fragmented in such a way that it drags all the way down into Cumberland County, and it appears that the only point of contact between Chatham and Harnett is just a dry river basin, or – it doesn't do much to persuade me that this is a viable alternative. I speak in support of the amendment and ask for you to support it as well.

LT. GOV. DALTON: Further debate? Hearing none, the question before the Senate is the passage of Amendment 1 to the committee substitute to Senate Bill 453. Those in favor of the amendment will vote aye; those opposed will vote no. Five seconds will be allowed for the voting; the clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: 19 having voted in the affirmative and 27 in the negative, Amendment 1 fails. Any further discussion and debate on the bill itself? Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: Yes, sir, Mr. President. To send forth an amendment.

LT. GOV. DALTON: The Senator can send forth his amendment. Do the members have copies?

[49] SEN. NESBITT: Yes, sir. They should have.

LT. GOV. DALTON: Okay. The clerk will read.

CLERK: Senator Nesbitt moves to amend the bill.

LT. GOV. DALTON: Senator Nesbitt is recognized to explain Amendment 2.

SEN. NESBITT: Thank you, Mr. President, and members of the Senate. I bring to you an amendment from the far west, and I apologize to you to the extent that some of these amendments are provincial in nature, and I know all of you don't like to sit through

arguments about other Congressional districts. Unfortunately, it's necessary as we go through this process. I think we all got an education from Senator Blue, from an area of the state where there is a large minority population, and it is the economic engine of the state.

I'm going to give you an end of the state that is not the economic engine of the state. It's struggling to support its people in a meager way. If it hadn't been for the Cherokee Nation, when you look west of Haywood, you wouldn't have much out [50] there. Those folks out there actually built their own fiber optic cable loop through about six counties with private enterprise and the Cherokee Nation. It's the only way they would have gotten broadband, probably in our lifetime. They did it themselves.

And in that district, Buncombe is the urban hub. It's the urban center. And as such, the political center, if you will. It helps the rest of that end of the state get what it gets. When Congressman Taylor was our Congressman up there, a Republican, he brought a great deal of Internet money to our region, and we were able to get some of it out into the rural counties, trying to get everybody connected, but it all had to flow through Buncombe to get out on main lines to the other parts of the state.

And for whatever devious purpose, a district has been cut in – if you'll look at the Rucho-Lewis map – has been cut in so that they could go – they had to come through the existing 11th in Rutherford and Polk to get into Buncombe so they could jump in there and basically take out the city of Asheville. And in doing so, took out the only sizeable minority population that I know of [51] that exists west of Charlotte, actually. There may be another pocket or two. But in Asheville, we have a sizeable minority population. They were in

a position where they were, in some elections, the deciding group in an election. They were of influence up there, and now they've been suppressed into the 10th District where they won't have a chance.

And for the life of me, I haven't found a good reason for doing what they did. Our newspaper editorialized about it. I read it to you in committee. They used every word that they could think of to describe it out of the dictionary and said there were a few more, but they all tended to be four letters. They wrote another editorial the other day, and I apologize to Senator Apodaca. He asked me in the committee if I had seen that map where back in 2001, I guess it was, the Democrats were doing something similar, and I hadn't read it at that time, because I hadn't had time to read my news clips that day, but when I read it, they showed that map, and they wrote another editorial saying they'd been accused of being on this one.

But they said, "Let us tell you what we said in 2001." And they went back and repeated it, [52] and it was the same thing. They thought it was sorry as all get out, too, but they said the difference was, wisdom prevailed in 2001, and it apparently isn't being heeded this time.

The people of the mountain region are absolutely stunned that this is being done to them. They're upset about it. And if you think you're going to get political gain out of this trick, maybe you will, when they get over it, but mountain people don't get over it in a hurry. I'll tell you that. And for those around Buncombe, they're upset about that. In the far west, they're upset about what you're doing to Congressman Shuler. He's an extremely popular fellow out there, a football hero that came back to live in his region and run for Congress, and they will not get over it. I don't think that you will get political gain out of this. All you

are doing is disrupting a region of the state that desperately needs to stick together so that maybe we can get just a little piece of the pie up there.

Last year in this session – last year, you all may recall that I helped get the Appalachian Regional Commission money restored for the Appalachian Regional Commission projects.

[53] Politically, that money had been sidetracked. It's only for those roads that we want built and the Appalachian Regional Commission feels like need to be built so that we can get to a four-lane highway. And we had to take that money back for them, and I led the way in helping take it back. I'm from Buncombe. It doesn't help me a bit. It's to get a four-lane road from Jackson to the far western end of the state. There's no four-lane road out there. From Asheville to Cherokee is 120 miles, folks, the same distance it is from Asheville to Winston-Salem.

With missing links all through the roads out through there and everything else, these people need to be left alone, at least. With the Cherokee Nation and the economic engine that we have going in Buncombe County, we will make it, and we'll better than make it. We'll do just fine up there. But when you go busting us up politically, it neuters that region up there politically for no gain. I would urge you to support the amendment.

LT. GOV. DALTON: Discussion and debate on Amendment 2? Senator Rucho, for what purpose do you arise?

SEN. RUCHO: To debate the amendment.

[54] LT. GOV. DALTON: You have the floor.

SEN. RUCHO: We all believe that the mountain people are very good people and a very important part

of North Carolina. It was felt that if every urban center had, as was originally proposed by the Democrats in previous redistrictings, that each of those urban centers should have the opportunity to have at least two people, Congresspeople speaking for them, or Congressmen and women speaking for them in Washington, to make sure that they have those diverse interests taken care of during the time in Washington. And therefore, that was the purpose behind it.

The map – the Rucho-Lewis Congressional map provides fair, legal and competitive districts that are very compact, and I would urge that you oppose this amendment and support the Rucho-Lewis Congressional 2-A map, so oppose this amendment.

LT. GOV. DALTON: Any further debate? Hearing none, the question before the Senate is the passage of Amendment 2. Those in favor of the amendment will vote aye; those opposed will vote no. Five seconds will be allowed for the voting; the clerk will record the vote.

[55] (Electronic vote.)

LT. GOV. DALTON: 19 having voted in the affirmative and 27 in the negative, the amendment fails.

The floor is now back open for debate on the bill itself. Senator Stein, for what purpose do you arise?

SEN. STEIN: To send forth an amendment. LT. GOV. DALTON: The Senator can send forth his amendment.

SEN. STEIN: It has been circulated.

LT. GOV. DALTON: Okay. The clerk will read.

CLERK: Senator Stein moves to amend the bill.

LT. GOV. DALTON: Senator Stein is recognized to explain Amendment 3.

SEN. STEIN: We just gave you all a couple of discrete options to tweak your map to make it compact, coherent, legal. Now, we're going to give you one statewide that will solve a number of problems. This amendment, Congressional Fair and Legal, I'm pleased to present to you all today.

I'm going to begin my discussion by highlighting the broad principles we used to [56] develop the plan, then I'll outline some of the significant features in certain specific districts that we've drawn. And finally, I'm going to do a comparison so we can look at ways – how our Congressional Fair and Legal stacks up against Rucho-Lewis 2.

About the only thing that the committee chairs and we agree on is the factors that one needs to consider when drawing the map. You start with federal law. The U.S. Constitution's requirement of one person, one vote, dictates that each district shall have the same population, to the extent practical.

The Voting Rights Act, there are two main provisions of the Voting Rights Act that have to be considered in any Congressional redistricting to ensure that there is no discrimination against racial minority groups. Section 2 forbids any rule, practice or procedure that causes racial vote dilution. And then Section 5 covers certain areas in the country that have historically exhibited factors associated with racial discrimination, which includes 40 of North Carolina's 100 counties. And in those counties, as Senator Blue and Senator Rucho discussed earlier, there can be no [57] retrogression, meaning you can't take a step back; you can't make things worse off for the minorities that live in those areas.

After complying with those federal requirements, we took into account some additional considerations that have been relevant in past redistricting cycles. First and foremost, community of interest. We attempted to draw lines that reflect the interests and desires of the people of North Carolina, like the people who spoke repeatedly at the public hearings over the past couple of months.

One special type of community of interest in North Carolina, as reflected in our state constitution, is the county. We assume certain of our identity by what county we hail from. We are connected to our counties. Accordingly, we set out to respect county lines by keeping them whole where we could, and of course, when you have zero deviation, you can't do it everywhere, but certainly, that was a goal.

District compactness, that was another criteria we took into account. Contiguity, we avoided any point contiguity like you all have in the 4th District of Rucho-Lewis 2 at that point of [58] Chatham and Harnett County, where it's about a five-foot-wide river stream.

Competitiveness, and this may be where we differ most. We certainly believe that competitiveness has benefitted our state. Our elected officials, whether they're in Raleigh or in D.C., work better when there is competition, because we can work closer together. It's important to have representatives from both parties in Washington, because leadership changes. You have a Republican speaker one cycle; you have a Democratic speaker the other cycle. It's good to have representatives from both parties in Washington. And to that end, we have avoided what we call double-bunking in our map, so that there's only one incumbent in each district.

I won't go into each district, but I will highlight some of the important criteria as it applies to key districts that we thought about when drawing our map. Start with Congressional District 1. There is an important state interest in ensuring that African-Americans in the eastern part of the state covered counties remain able to elect candidates of their choice in compliance with Section 5 of the Voting Rights Act. The current [59] black voting age population of the district is 47 percent, according to the Census. Population is short there, because there hasn't been the same population growth that there's been in the Piedmont. It needs to pick up about 90,000 people. Where do you get those folks from?

Well, we've done it in a way that preserves the identity of this district's core as a rural, eastern North Carolina district. We relied on testimony expressed in public hearings endorsing this approach, in addition to the statements of Congressman Butterfield in support of maintaining the eastern district in its basic configuration. Senator Jones introduced for the record a statement from Congressman Butterfield, and in that statement, Congressman Butterfield wrote, "District 1 can be preserved to fully encompass its historic, rural Eastern North Carolina orientation." This is appropriate because this district already has a well-established identity and community of interest for voters in the eastern part of the state.

The additional territory brought into conditional district – Congressional District 1 to achieve this population requirement comes from the eastern part, and are in Section 5 counties.

[60] Congressional District 4, which we've debated, Senator Blue offered an amendment, is rooted, as we all know, in the Triangle region. The Triangle helps to distinguish North Carolina as a hub for high-level

research, innovation and intellectual thought, and is home to several world-class universities. This Triangle district configuration dates back to the 1930s. Preserving the core of this district is imperative, and no radical change is needed to do that. We're subtracting 100,000 people. We are not adding people. You just shrink what you have; that's how you come up with a compact district.

We removed some of the population from Wake County, and if you look, all of Orange and all of Durham, they are whole counties in this map, District 4. Look at Rucho-Lewis Congress 2-A: parts of Durham. In fact, Durham is sliced four different ways. We have it as a whole county in our map.

Congressional District 12 has an especially storied past in the world of redistricting law, as you all know. It's important to preserve this district's core as a Democratic performance district with the current internal [61] balance of populations within this district, because this configuration has been approved by the Supreme Court. A major change, because it, too, grew in population, is that Guilford County has been removed from the district, given the population growth.

Your map packs African-Americans into the 12th District. Representative Watt also submitted a statement as introduced by Senator Graham, in which he writes, "Plan 1 proposed to increase the African-American population in the 12th District from approximately 40 percent to over 50 percent. I have repeatedly expressed to Senator Rucho my belief that increasing the African-American population in the 12th District is not required, justified or sanctioned by the Voting Rights Act."

Senator Rucho asked for a definition of packing. Packing is when you put more African-Americans than

are required in a district to the effect of diluting their vote in other districts. He asked for a citation on that. The U.S. Supreme Court in Voinovich wrote that the practice – this is a quote from the Supreme Court. "The practice challenged here, the creation of majority-minority districts, does not invariably minimize or maximize [62] minority voting strength. Instead, it can have the effect of either or neither. On the one hand, creating majority black districts necessarily leaves fewer black voters and therefore diminishes black voter influence in predominantly white districts. On the other hand, the creation of majority black districts can enhance the influence of black voters. Placing black voters in a district in which they constitute a sizable and therefore safe majority ensures that they are able to elect candidates of their choice. Which effect the practice has, if any at all, depends entirely on the facts and circumstances of each case."

Well, if we elect your map, we – one thing we are certain of is, there will be a next case.

Congressional District 4 – like Congressional District 4, Congressional District 11 in the west is a significant part of our very diverse state. Senator Nesbitt just articulated the importance of keeping Asheville as the center, the heart of the western region. This map does just that.

Congressional Districts 13 and 6 have largely been preserved, but they've undergone some [63] changes. In light of the population shifts, we elected to balance Congressional District 13 with a population anchored in two urban centers, Greensboro and Raleigh. Because Guilford is a county covered by Section 5 of the Voting Rights Act, we were careful to assure that the African-American population was not worse off – made worse off by dividing the county. The large – the

population centered in Greensboro is largely kept together and shifted to Congressional District 13.

I'd like to compare the two maps, Congressional Fair and Legal and Rucho-Lewis 2-A. Our plan is actually fair and legal, unlike the Republican proposal. I'll consider compliance with the Voting Rights Act, responsiveness to public input, compactness, community interest and partisan competitiveness.

First, compliance with the Voting Rights Act. The majority's map fails to comply with the Voting Rights Act in two fundamental ways. First, it doesn't show due regard to the Section 5 communities in Congressional District 1. It ignores counties relating to – related to retrogression by only touching on select populations within Chowan, Perquimans, Gates, [64] Martin, Washington, Edgecombe and Greene Counties, rather than the whole county population, as Congressional Fair and Legal does, and as is required by the Voting Rights Act.

Second, the law and subsequent court rulings simply do not require that the black percentage in Congressional District 1 be over 50 percent. Strickland, which Senator Rucho cites for that proposition, does not apply to Congressional maps; it applies to legislative maps. And it only applies in legislative maps where you're crossing county lines and where you have met the requirements of a Section 2 claim, which is that you have a compact community and there is a history of electoral – where African-Americans can't elect a candidate of their choice, and there's hostile voting by the majority in that community.

Our Congressional Fair and Legal map protects Congressional District 1, consistent with what the law requires, while at the same time, keeping it basically a rural, eastern North Carolina district.

Following public input. Unlike the majority, we've taken to heart many of the comments we heard that were made online and at the public [65] hearings across the state. To us, the public comment opportunities, they weren't just a dog and pony show, but rather a real opportunity to hear what the people of this state said they wanted. We heard and responded to the citizens of northeastern North Carolina, who asked us to keep Congressional District 1 an eastern district. We heard and responded to the citizens of the Triangle who asked that we keep an RTP district in the 4th. We heard and responded to the loud protests at the public hearings in the western part of the state, in Asheville and Hickory. Our map maintains the mountain district with Asheville wholly contained within and keeps Catawba County whole within the 10th District. We heard from Wilmington their displeasure about being stripped from the 7th and tucked into the 3rd.

By any measure, our Congressional Fair and Legal is more compact and protects communities of interest far better than the majority's map. If you look at a common measure of compactness, total perimeter miles of all district boundary lines, our map is 75 – 7,547. Rucho-Lewis 2-A is 8,632. That's over 1,000 miles of unnecessary boundaries to your Congressional map.

[66] The majority's map splits 40 counties. 40 percent of the North Carolina counties are split in this map. We've done some research, cannot find another state in the country that comes anywhere close. The highest we found was 28 percent of counties split in Oklahoma, and this map splits 40 counties, and our constitution directs us to take into account whole counties.

The current 2001 Congressional map splits 28 counties. Our Fair and Legal map splits only 26 counties. Ten of those are in the 1st, five of those are in the 12th, so excepting those 15, it's 11 county splits in the whole state of North Carolina. At the precinct level, our Fair and Legal map splits 30 percent fewer precincts than Rucho-Lewis 2-A.

Partisan competition. The majority's map does not honor the partisan balance that exists in North Carolina. The majority's map is, in effect, a 10 to 3 Republican list – map, when an honest and realistic historical analysis is done. Our map more accurately reflects the partisan preferences in North Carolina. We're essentially a 50-50 state. 2008, if you aggregated all the Congressional votes cast, 54 percent were cast for [67] a Democratic candidate for Congress. In 2010, if you did the same thing, 54 percent were cast for a Republican candidate for Congress. We have good years; you all have good years.

If you look to the last presidential election, we were the second-closest state of margin in the entire country. 14,000 people was all that split Obama and McCain in 2008. And we've learned from Senator Rucho that you look to that very presidential election when figuring out how to divide up these lines and determine competitiveness. Well, if you do that, and you look at the majority's map, Rucho-Lewis 2-A, Obama only carried three of the districts out of 13. McCain carried ten. And what's notable is, of those ten, Obama wasn't within five percent in any of them.

Under the map that I'm asking you all to consider, Obama would have carried four. McCain would have carried five, and in four of those other districts, they would have been within five points of each other. That is a more competitive map.

Double-bunking. North Carolina has a long practice of equitable Congressional redistricting. In the last round of redistricting, [68] unlike this time, the Democratic leadership made several accommo-dations to incumbent Republican members of Congress, and not in recent memory, if ever, have incumbent members, Democrat or Republican, been double-bunked. Yet this map breaks that historic tradition in North Carolina. It double-bunks four Democratic members but no Republican members.

Our map is appropriately named Congressional Fair and Legal. Our map complies with the Voting Rights Act as it exists and it was meant to be interpreted. It is a map that honors the vast majority of comments heard at the public hearings across the state, including comments from self-identified Republicans, and it reflects the established communities of interest. It is a map that splits fewer counties than the majority map, and fewer – fewer even than the 2001. It is a map that represents the best ideas of the people of North Carolina. It is a map that reflects partisan balance in our state.

For years, we've heard, if ever there were a chance for the majority party to lead redistricting, they would ensure that districts were drawn to allow voters to choose their [69] representatives, as opposed to representatives choosing their voters. I urge you to vote for this amendment rather than the underlying bill so that we can all keep that promise.

LT. GOV. DALTON: Discussion and debate on Amendment 3? Senator Rucho, for what purpose do you arise?

SEN. RUCHO: To debate the amendment.

LT. GOV. DALTON: You have the floor.

SEN. RUCHO: Its unfortunate, but I have to stand up to oppose this amendment, and primarily because of the fact it doesn't meet the criteria that was established when Rucho-Lewis Congress 2-A was established and developed, which included the Voting Right – compliance with the federal law dealing with the Voting Rights Act Section 2 and Section 5, one person, one vote, zero deviation population as required. This Rucho-Lewis Congress 2-A map produced fair, legal and competitive districts that will allow any – any candidate to run in these districts, and with a good message, they could win.

And then lastly, I think Senator Stein, as he eloquently spoke, probably needs to reconsider the title of his amendment to his [70] Congressional Unfair and Illegal. And with that, I'll ask that you oppose his amendment in the next vote.

LT. GOV. DALTON: Senator Stein, for what purpose do you arise?

SEN. STEIN: To see if Senator Rucho will yield for a question.

LT. GOV. DALTON: Senator Rucho, do you yield?

SEN. RUCHO: For a question.

SEN. STEIN: I'm looking at the deviations of the map that I'm presenting, and there are only four districts that deviate from 733,499, and they are 7,400 – 700,000 – 733,498. How has this map violated one person, one vote?

SEN. RUCHO: What I said is basically the fact that the map that would be Rucho-Lewis Congress 2-A complied with all the federal laws, and I believe that with that fact, there is no alternative but to vote for Rucho-Lewis Congress 2A, because that is the one that will be able to be precleared and allow for the election,

the 2012 election to occur in a timely manner, which is a way that we in North Carolina owe the voters, and that is, not to disenfranchise them. So I would [71] urge you to vote for the Rucho-Lewis 2-A and opposing Senator Stein's amendment.

SEN. STEIN: Follow-up?

LT. GOV. DALTON: Follow-up question.

SEN. STEIN: I heard you to say that this map was unlawful. I would very much be interested in knowing what law this map would violate when it is equitable population, complies with the Voting Rights Act, is substantially more compact, respects whole counties, splits fewer precincts, fails to double-bunk any incumbent, and would result in a more competitive electoral landscape. How is that unlawful?

SEN. RUCHO: To answer that question, I believe there are some serious problems in both Section 2 and Section 5 of the way Senator Stein's map is drawn, and therefore, it is unacceptable for us to approve that amendment, and I urge you to vote against it.

LT. GOV. DALTON: Further discussion and debate? Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: To speak on the bill. LT. GOV. DALTON: You have the floor. SEN. NESBITT: Thank you, Mr. President, [72] and members of the Senate. It's been remarkable as we've gone through this process. It seems like when the whole world's screaming, Senator Rucho hears less and less. Two letters that were put into the record today and weren't read – I believe G.K.'s a lawyer, isn't he? These two fellows aren't normal, but they are educated attorneys, and they are Congressmen, and they are minority Congressmen. And I want to read you what they had to say.

G.K. Butterfield; "I was then, and remain, adamant that you restore the missing counties to District 1 to avoid retrogression and to continue the legal protection afforded minority voters in Section 5 counties." Didn't do that. "These very concerns were also expressed during the public comment period by numerous voters from the affected counties and others across the state." Didn't listen.

"Unfortunately, the revised plan does not fully restore the Section 5 counties, but instead extracts African-American voters from their communities and needlessly dissects affected counties, thereby reducing their collective influence. Additionally, the amended plan [73] unnecessarily packs new African-American voters from counties not covered by Section 5 of the Voting Rights Act." Now, it goes on, but I think his opinion is pretty clear.

Senator Watt expressed it this way: "I have repeatedly expressed to Senator Rucho my belief that increasing the African-American population of the 12th District is not required, justified or sanctioned by the Voting Rights Act. The Voting Rights Act, which I was instrumental as a member of the House Judiciary Committee and as chairman of the Congressional Black Caucus in getting Congress to reauthorize and extend, was designed to counteract the effects of racially polarized voting and level the playing field for African-American candidates. It was not designed to create racial ghettoes in which African-American candidates are given an inordinate and unreasonable electoral advantage."

And I don't know, it seems like thousands of people who commented on this Rucho-Lewis map, the two Congressmen that represent these two districts which have rather large African-American constit-uencies, all of us don't count. I mean, that just doesn't count.

And he must be listening [74] to some experts that aren't in the room and that have not appeared at these hearings, because I've not heard anything close to anything that would justify what he's proposing to do in these Congressional maps. And I urge you to listen to the Senators who represent – to the members of Congress who represent this area and the people of this state, and bring some sanity back to these maps.

And I think the Fair and Legal Congressional map presented by Senator Stein is just that. It beats his plan – it beats Rucho's plan on every corner and in every way, and I would urge you to adopt the amendment.

LT. GOV. DALTON: Further discussion and debate? Hearing none, the question before the Senate is the passage of Amendment 3. Those in favor will vote aye; those opposed will vote no. Five seconds will be allowed for the voting; the clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: 19 having voted in the affirmative and 27 in the negative, Amendment 3 fails.

Members, before I call for further debate [75] on the bill, let me do a bit of housekeeping. Messages from the House, the clerk will read.

CLERK: "Special message from the House. Mr. President, it is ordered that the message be sent to your honorable body with the information that the House of Representatives passed Senate Bill 496, ratified edition, An Act Relating to the Requirements of Medicaid Health Care Choice Providing, notwithstanding the objection of the Governor, and the bill becomes law. Respectfully, Denise Weeks, Principal Clerk."

"Mr. President, it is ordered that the message be sent to your honorable body with the information that the House of Representatives passed Senate Bill 781, ratified edition, An Act to Increase Regulatory Efficiency in Order to Balance Job Creation and Environmental Protection, notwithstanding the objection of the Governor, and the bill becomes law. Respectfully, Denise Weeks, Principal Clerk."

LT. GOV. DALTON: Okay, members of the Senate, we're back to the calendar. Any further discussion and debate on the committee substitute to Senate Bill 453. Senator Mansfield, for what purpose do you arise?

[76] SEN. MANSFIELD: I have a question to ask Senator Rucho.

LT. GOV. DALTON: Senator Rucho, do you yield?

SEN. RUCHO: Yes, sir.

SEN. MANSFIELD: My question, and please correct me if I'm wrong, do I understand that the way that you separated Congressional District 2 from Congressional District 4 was solely based on the 2008 presidential election? That's how you went through –

SEN. RUCHO: That was what was discussed in the statement and all the questions that have been discussed earlier.

SEN. MANSFIELD: Now, this is my true question.

LT. GOV. DALTON: Follow-up. Follow-up.

SEN. MANSFIELD: Thank you, Mr. President. In Cross Creek 1, which is the district that I represent, or precinct I represent, you have 100 percent of the white people going into Congressional District 2. Is that to say, based on what you just said, that 100 percent of the white people in Cross Creek 1 voted for McCain, and not a single one of them voted for President Mama, even [77] though they voted for me? I mean, I –

Senator Blue brought it up, and I'm just trying to figure out, because we keep saying this is not about race, but in Cross Creek 1, you're saying not a single white person, which is – Cross Creek 1 is overwhelmingly Democratic by the way, that you're saying that none of them voted for the President?

LT. GOV. DALTON: You may respond.

SEN. RUCHO: Yes, sir. Well, first of all, Senator Mansfield, I reject your premise in your statement, and I'll refer you back to the statement that I made regarding how the District 4 was formulated, and it is very clear, as was in the statement and the questions earlier, that it was drawn based on the VTD's that voted for the 2008 election for the president.

LT. GOV. DALTON: Senator Mansfield, for what purpose do you arise?

SEN. MANSFIELD: To ask Senator Rucho a question?

LT. GOV. DALTON: Senator Rucho, do you yield?

SEN. RUCHO: Yes, sir.

LT. GOV. DALTON: He yields.

SEN. MANSFIELD: I have the VTD's; that's [78] why I asked. And I'm going to tell you, I'm very uncomfortable even going down this line of reasoning, because if we're saying that we're doing it based on the elections and not race, I'm just going off the facts. And the facts say that Cross Creek 1, you have 100 percent of the people, of white people going into Congressional District 2, when that means, based on what you just said, not a single white person in Cross Creek 1, voted for the President when there's a precinct that I cover and that I know for sure is an overwhelmingly Democratic-leaning precinct. That kind of goes against what I know about that precinct.

LT. GOV. DALTON: I assume the question is, is that not the correct premise or – somewhere there's got to be a question in there, Senator Mansfield; otherwise, that's debate.

SEN. MANSFIELD: Thank you, Lieutenant Governor, I agree. That's what I'm asking. I'm trying to understand, what is the premise when you say that you did it about – against presidential election but in this particular case, it looks as though to me that it's done on race. Can you just please clarify what you're saying?

SEN. RUCHO: To best answer this [79] question, apparently your interpretation may or may not be accurate, likely is not accurate as far as I understand it, because our premise as we drew those was based on the 2008 election. And, you know, with the many hundreds of VTD's, that is how we made our choice, and I think it was made very clear in the statement and also during the earlier questions that were asked.

LT. GOV. DALTON: Any more discussion and debate?

SEN. MCKISSICK: Mr. President.

LT. GOV. DALTON:. Senator McKissick, for what purpose do you arise?

SEN. MCKISSICK: Setting forth an amendment.

LT. GOV. DALTON: The Senator can send forth his amendment. I assume members already have copies.

SEN. MCKISSICK: Oh, excuse me.

LT. GOV. DALTON: We do not have the copies – we do not have the original up here. You need to send it forward.

SEN. MCKISSICK: We haven't voted on the prior one yet. Excuse me, Mr. President.

LT. GOV. DALTON: Excuse me? Wait a [80] minute. I didn't hear what you said.

SEN. MCKISSICK: No. It's not the congressional plan, Mr. President. I was a step ahead of you. That's okay.

LT. GOV. DALTON: Two or three steps ahead of me but that may not be unusual. Okay.

We're back to the principal bill, then. No amendments on the floor at this time. Any further discussion and debate on the committee substitute to Senate Bill 453?

(No response.)

LT. GOV. DALTON: Hearing none, the question before the Senate is the passage of the committee's substitute to Senate Bill 453 on its second reading. Those in favor will vote aye; those opposed will vote no. Five seconds will be allowed for the voting.

(Electronic vote.)

LT. GOV. DALTON: 29 having voted in the affirmative and 17 in the negative, the committee's substitute to Senate Bill 453 has passed its second reading and, without objection – Senator Daniel, aye? I think you were recorded. Senator Berger, Franklin, no, and Senator Daniel, aye. He thought we were still on the amendments, I guess. Okay.

[81] So the call on the second reading was what, Adam?

Okay, let's just go back and vote it again. Strike that vote.

Question before the Senate is the passage of the substitute to Senate Bill 453 on its second reading. Those in favor will vote aye. That is green. Those

opposed will vote no. That is red. Five seconds will be allowed for the voting. Clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: 27 having voted in the affirmative and 19 in the negative, the committee's substitute to Senate Bill 453 has passed its second reading and, without objection, will be read a third time.

CLERK: North Carolina General Assembly enacts.

LT. GOV. DALTON: Any further debate?

Hearing none, the question before the Senate is the passage of the committee's substitute to Senate Bill 453 on its third reading. All those in favor will vote aye. Those opposed will vote no. Five seconds will be allowed for the voting. The Clerk will record the vote.

[82] (Electronic vote.)

LT. GOV. DALTON: 27 having voted in the affirmative and 19 in the negative, the committee's substitute to Senate Bill 453 has passed its third reading and will be sent to the House.

Senate Bill 455, the Clerk will read.

CLERK: Senate Bill 455, Rucho Senate 2.

LT. GOV. DALTON: Senator Rucho is recognized to explain Senate Bill 455.

SEN. APODACA: Mr. President.

LT. GOV. DALTON: Senator Apodaca, for what purpose do you arise?

SEN. APODACA: Motion, please.

LT. GOV. DALTON: Senator has the floor to make his motion.

SEN. APODACA: Mr. President, I move that the Senate recess until 3:30, and at – for the next 10 minutes we'll have a Rules meeting downstairs and then 15-minute caucus meetings after that and come back in at 3:30.

LT. GOV. DALTON: Okay. I've got a motion, but let me first ask, any – any objection to the motion or any other announcements?

Senator Nesbitt, for what purpose do you [83] arise?

SEN. NESBITT: Mr. President, inquiry of the Chair. Some of us don't have a copy of the map that goes with this bill, so I don't know if it has been passed out to everybody else or not.

LT. GOV. DALTON: Let's make sure it's –

SENATOR NESBITT: While we're on recess, I thought they could get that straight.

LT. GOV. DALTON: Well, let's get it before we go on recess, so you can discuss it in your caucuses and do whatever. Everybody stay in session right now.

If everyone who does not have a map will raise your hand, the sergeant at arms said that they will get them to you. It sounds like it's everybody or looks like it's everybody.

SERGEANT AT ARMS: Sir, these maps were just made available to us and we will pass them out.

LT. GOV. DALTON: Thank you.

(Pause)

LT. GOV. DALTON: Members of the Senate, let's come back to order. Does everybody now have a copy of the map? Okay. I take it that you do. I think we have read in Senate Bill 455 and then [84] the request was to recess how long, Senator Apodaca?

SEN. APODACA: 3:30.

LT. GOV. DALTON: Okay. I will also inform you that during the last recess, the statement from Congressman Watt and Congressman Butterfield was read into the journal.

Any announcements for this recess?

SEN. APODACA: Mr. President.

LT. GOV. DALTON: Senator Apodaca, for what purpose? Make an announcement?

SEN. APODACA: Yes, sir, Mr. President. Anyone that is a member of the rules committee, as soon as we recess here, we're going to have a very quick meeting downstairs to deal with the community college nominee for the board. Thank you.

LT. GOV. DALTON: Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: The Democrats will caucus right after this meeting.

LT. GOV. DALTON: Okay. Hearing nothing further, let's make it subject to receipt of house messages. I don't know if that will be an issue. The Senate will stand in recess until 3:30.

(RECESS, 3:08 - 3:40 P.M.)

[85] LT. GOV. DALTON: The Senate will come to order. Members will please take your seats. SEN. APODACA: Mr. President.

LT. GOV. DALTON: Senator Apodaca, for what purpose do you arise?

SEN. APODACA: Motion, please.

LT. GOV. DALTON: You have the floor to make a motion.

SEN. APODACA: Mr. President, it has been found we are short some attorneys in the chamber, so if we could, Senator McKissick needs to bring his two attorneys on the floor. So to keep the levels up, I move that we allow Senator McKissick to bring his two attorneys on the floor and also, if he would, identify them for the record.

LT. GOV. DALTON: Senator McKissick, for what purpose do you arise?

SEN. MCKISSICK: To identify two attorneys who have come upon the floor.

LT. GOV. DALTON: Okay.

SEN. MCKISSICK: Bill Gilkerson, who will be a familiar face to all of you, and David Harris.

LT. GOV. DALTON: Okay. Courtesies of the floor are extended to those attorneys.

Members, I think we have read in Senate [86] Bill 455, have we not? It's on the board. Senator Rucho is recognized to explain Senate Bill 455.

SEN. RUCHO: Thank you, Mr. President. Ladies and gentlemen of the Senate, we are taking on now Senate Bill 455, and on your map, it's entitled Rucho Senate 2. I have a brief statement.

LT. GOV. DALTON: The senator has the floor.

SEN. RUCHO: Thank you, Mr. President. From the outset of this process, we have attempted to be as open and transparent as possible. With 63 public hearings, comments coming in from across the state on our website and those collected from emails and regular mail, we have received a diversity of opinions on redistricting. We have done our best to construct plans that take into account public input to the maximum extent possible. In drawing these districts, we upheld the one person, one vote standard, drawing districts at

plus or minus five percent of ideal population. We have fulfilled the requirements of the Voting Rights Act, and we have complied with the Stephenson criteria.

Unfortunately, some parties have refused to engage in this redistricting and have not taken [87] advantage of the opportunity to produce comments or suggestions. Specifically, though efforts were made and resources were provided for the minority party and the Legislative Black Caucus to draw maps and obtain legal advice in putting forward their concepts of ideal redistricting plans, no plans had been forthcoming until the very last hour. The leadership of the House and Senate Committee on Redistricting has made public proposed plans for more than a month, something that has never, to our knowledge, been done in the history of North Carolina involving redistricting.

The minority party has followed the same strategy they followed when they were in charge of this body, and that's delaying and hiding their plans until the last moment possible. By the time their map has come forward, we have already passed our proposal through Committee, spent hours enduring criticism and debating the merits of our legal strategy without so much as one draft proposal or legal memo offered by our critics.

The people of North Carolina are entitled to a fair and open discussion on the redistricting process. We have tried to provide that with transparency and frank discussion of our legal [88] strategies and methods for drawing plans. The Democrats have made no such attempt. They have not given the public an opportunity to review their maps or made clear what legal reasons they have for disagreeing with our interpretation of the law.

Openness and transparency is a two-way street. It is obvious that only the Republicans have maintained that standard throughout the entire process. As an example of Democrats' failure to engage in fair and open debate, our critics have been unable to produce even one legal case that supports their contention that districts in our plans are packed. They have brought forward only two cases. One, Miller versus Johnson, that doesn't address the issue of packing, and even contain the word itself, and another, Voinovich versus Quilter, that rejected the theory of packing advanced by Democratic plaintiffs while defining the word itself just as we have throughout the process. Quite frankly, their legal evidence is either irrelevant or supports our legal conclusions on the maps that we drew.

The Democrats have been unable to produce any legal evidence to support their theory of packing, not because they are not researching the [89] issue thoroughly but because no such legal evidence exists. We have repeatedly discussed that we have made the decisions to draw our majority-minority districts at such a level that a majority of the minorities make up the district because of Strickland versus Bartlett case. That case said that any district drawn to comply with or avoid liability under Section 2 of the Voting Rights Act must be drawn at 50 percent or greater of – excuse me – 50 percent or more of black voting age population.

We believe that drawing these districts at 50 percent plus 1 black voting age population and providing a roughly proportional opportunity for African-American voters to elect their candidate of their choice, statewide will preclude the possibility of a successful Section 2 lawsuit being filed against the State. The Supreme Court has previously found Section 2 liability in North Carolina in the case of Thornburg versus Gingles in Wake, Mecklenburg, and Forsyth counties as well as other northeastern

counties that are covered by the Section 5 of the Voting Rights Act. Those counties make up the core of many of our VRA districts. We believe that the judgment in Gingles is binding on [90] North Carolina and has all prior – as it has on all prior General Assemblies.

Additionally, we have reviewed evidence of racially polarized voting in North Carolina that it led us to believe that additional VRA districts could be and should be drawn. For example, a report commissioned by the committee leadership on racially polarized voting by Dr. Thomas Brunell, shows statistically significant racially polarized voting in every county which we have proposed majority districts. We also received a statement from Anita Earls that there was still a need for majority-minority districts in North Carolina as well as a report from Dr. Ray Block, Jr., indicating that racially polarized voting continues to exist in the areas in which we have recommended majority districts.

We also are aware of the dictates of Section 5 of the Voting Rights Act and the requirement it sets out for the state if we hope to attain pre-clearance of our redistricting plans, once adopted. We know that given – that 40 North Carolina counties are covered by Section 5. We must not retrogress the position of African-Americans in regards to their electoral [91] opportunities or, in other words, we must not put African-Americans in a worse position than they were under the previous plans.

By creating additional majority-minority districts in our proposed plans, as compared to the previous plans, we have not retrogressed nor have we engaged in purposeful discrimination. That is Beer versus the United States. In one specific instance in Forsyth County, we found that it was not possible to draw a majority black district wholly within the county in

keeping with the county grouping criteria set out in Stephenson versus Bartlett. What we have done is draw the district at a level of black voting age population of 42.53, similar as to how it has been drawn in the past.

Additionally, the district includes Hispanic voting age population of 14.2 percent, creating the best minority opportunity possible under the applicable legal restrictions. We have also removed the white incumbent from the district who has previously defeated African-American primary challenges, and we think that this will provide the minority community within the district with a better opportunity to elect a candidate of their choice.

[92] In Senate District 3, considered by Democrats to be an effective minority district, a white incumbent has repeatedly been elected after routinely defeating African-American challenges in the Democratic primary. Despite this fact, Democrats have attacked this district as evidence of packing because it – the black voting age population has increased from 46.03 to 52.43 percent in drawing a whole county district based in counties where evidence of racially polarized voting has been shown.

The Democratic leadership has not produced any evidence that a district can be drawn at a level of less than 50 percent black voting age population in that area of the state that will afford the opportunity of the African-Americans in the district to elect a candidate of their choice. By drawing the district at the majority black level using whole counties in keeping with Stephenson's group – county grouping criteria, we have precluded the possibility of successful legal challenges to the district under section 2 and ensured that a majority of voting age African-Americans will

have the opportunity to control the outcome of that election.

[93] In the previous plan, the Democrats classified Senate Districts 5 and 24 as influence districts without legal reference. These districts previously represented by black Democrat incumbents Don Davis and Tony Forest, respectively, both failed to – both failed to elect the candidates that were African-Americans within that district in the 2010 general election when both incumbents were defeated by white opponents. Senate District 5 has been drawn in such a way as to include a 50 percent-plus back voting age population to rectify this problem. Senate District 24 could not be redrawn in such a manner.

We have been criticized by Senator McKissick for drawing his Senate district 20 to a majority black level. In so doing, we have cited the evidence produced by Thomas Brunell that there has been racially polarized voting in Durham County in Senator McKissick's Senate race in the past. Senator McKissick also ignores the fact that in adding Granville County into the district, which is necessary to comply with Stephenson, we are providing the opportunity for other African-American communities in additional counties covered by Section 5 of the Voting Rights Act to elect the [94] candidate of their choice.

Previously, Durham and Granville were combined in the 2002 Senate fewer divided counties plan. In drawing this district, we also adhered to our stated purpose of providing the African-American community in North Carolina with substantially proportional electoral opportunity. We have been criticized by Senator Mansfield for drawing Senate District 21 at greater than 50 percent black voting age population by combining two Section 5-covered counties,

Cumberland and Hoke, which is another two-county combination required by Stephenson, and we were able to provide African-American voters in Hoke County the opportunity to elect a candidate of their choice.

Democrats have been unable to produce legal reasons to support their theory of the operation of the Voting Rights Act nor any political science data or studies of racially polarized voting to suggest what percentages of black voting age population is necessary to elect the candidate of their choice of the African-American community. In the absence of any principal, legal or factual basis for not doing so, we have decided to draw all of our Voting Rights [95] Act districts at a 50 percent-plus level.

I urge the Senate to pass the proposed fair, legal and competitive Rucho Senate plan. It complies with all the applicable federal and state laws and will receive pre-clearance and allow for the 2012 election schedule to be maintained.

Thank you very much.

LT. GOV. DALTON: The floor is open for debate. Senator Blue, for what purpose do you arise?

SEN. BLUE: To debate.

LT. GOV. DALTON: You have the floor.

SEN. SLUE: Thank you, Mr. President. Just a couple of comments in response to Senator Rucho's broad statements. I attended the public hearings as well, and I heard what the people of North Carolina said they desired in redistricting. And what they told us, loud and clear, is that they did not like Rucho Senate 1, and Rucho Senate 2 is simply a worse version of Rucho Senate 1. Senator Rucho says that there is no legal evidence on packing. Almost

uniformly, the black residents of North Carolina said, "We don't want to be treated differently so that you gather all of us up and put us in these ghettoized [96] districts so that we're set apart from the rest of the state."

Senator Rucho says that he has drawn maps so that there won't be successful Section 2 challenges. Section 2 of the Voting Rights Act. I take issue with him on that and also suggest to him that he might be interested in and concerned about a Fourteenth Amendment or an Article 1, Section 19, State Constitutional challenge under the equal protection of the laws clauses of the North Carolina and the United States Constitutions. Because we know what it means to be treated differently in this state. And all Rucho 2 does is finds out and figures out a way to treat black citizens different than others in North Carolina. Senator Rucho says that he has evidence of racially polarized voting in every county in which majority districts exist. He uses studies that go back a decade, two decades, and he puts a stake in the sands of time and makes an assumption that things never change.

A lot of us have spent our adult careers witnessing and evidencing change in North Carolina. And to think that things haven't changed since the 1980s, the 1990s, and even a decade ago, is playing [97] that game of the old ostrich, putting your head in the sand, refusing to see what's happening all around you.

Now, let me say this. Senator Rucho has said throughout the last couple of months that they were interested in fair and legal maps. You know, those are relative terms, at least fair is, and legal is, to some extent. I submit to you that the comments from people across the state tells you that they are not fair.

But let me tell you the other thing that's really bothering me about this discussion. We say it's legal

because there is no court that said this specific map is illegal. You know, I was watching two movies last week. They were about Nelson Mandela. One about the rugby team; Invictus, I believe was the name of it. And another one about his life and being on Goree Island and those places that I've been fortunate enough to visit. And, you know, apartheid was not illegal in South Africa until they said it was illegal. Just because you may sense that something is legal and tolerated doesn't mean it's right or that's it's fair or that it's the moral thing to do.

[98] Slavery in this country was legal until we declared it illegal. You know, until 1896, everybody thought that everybody was equal until the Supreme Court declared that you could have separate but equal. And so it became legal. And in 1954, when the Court reversed itself in Brown versus Board of Education and said no longer was separate but equal legal, it became illegal. We went through an era of Jim Crow because it was legal. It doesn't mean it was right. It doesn't mean it's the kind of thing that advances us as a society and as a people.

See, I grew up in North Carolina in the 1960s, and I always felt good when I would hear the speeches of Martin Luther King, Jr. Whether it was in his famous speech in Washington in 1963, when he said, "I have a dream," and he talked about from the lips of politicians in Alabama and Mississippi and other Southern states, the concept of interposition and nullification, notice he left North Carolina off that list. Notice he left North Carolina off the list when he talked about from the hills of Appalachia and all of those other things, because we had a sense of where we ought to be going.

[99] The Voting Rights Act was passed in 1965. It will be 45 years old on August 1st this year, since it was first passed. And the important thing about that

and why I mentioned it to you, is because it was passed to dismantle all these systems that had been put in place to keep African-Americans from voting in this – primarily in the South.

To dismantle those systems that had literacy tests, tests that made you – in fact, in Alabama, in Selma, Alabama, before the March on Selma in 1965, they had a form on it that had 50 blanks on the form. Blacks who to tried to register to vote had to write from dictation, four parts of the Constitution. Then, they had to interpret four separate parts of the United States Constitution. They had to answer four questions about the passages that they had written about. They had to take an oath of loyalty.

And you know what? In Selma, Alabama, in 1965, there were 9,897 registered voters in a city overwhelmingly black; 9,542 of them were white and 365 of them were black. That's why the Voting Rights Act was passed, to rectify those kinds of misdeeds. And part of the reason North Carolina [100] was not fully covered by Section 5 of the Voting Rights Act is because we had learned how better to treat each other. We weren't Alabama, we weren't Mississippi. We didn't have the conduct of the deep Southern states. Mississippi, five percent of the eligible black voters were registered to vote in 1960.

Now, why I say all of that to you is because it's important for you to realize that Everett Dirksen, then the minority leader of the United States Senate, played the major role in passing the 1964 Civil Rights Act and the major role in passing the 1965 Voting Rights Act, because he appreciated that being an American was being an American in every aspect of it. Not figuring out how to use this Act that he played a significant role in helping to get enacted, to some way or other segregate again black people in North

Carolina. Fool yourselves if you want to. That's what you're doing with these minority districts.

Now, Senator Rucho talks about what is legal. The Fourteenth Amendment to both our constitution and North Carolina and the federal constitution says, "No person shall be denied the equal protection of the laws nor" – and this is [101] North Carolina – "nor shall any person be subjected to discrimination by the State because of race."

Senator Rucho mentions Gingles, the 188384 decision that ultimately led to some of these districts that he is talking about. But he doesn't mention to you that Gingles says you've got to find specific things before you impose these districts. Remember, all of us are Americans, all of us are North Carolinians, all of us ought to be treated the same. And Gingles says, where you've got evidence that people aren't treated the same, then you will be forced to create these districts. Evidence they aren't being treated the same, where politically cohesive minority groups have been wrapped up in the multi-member districts so that they can't choose the candidate of their choice.

Some way or other they've been split and all other kinds of games, where voter registration is not where it ought to be. A sufficiently large and geographic unit so you can draw a district. You know, I don't know that they envisioned going multiple counties all over the state, trying to create these sufficiently large and geographical units, but more importantly, where the preferred [102] candidate is usually defeated by a white majority voting as a block. Now, that's the Gingles standard, and that's why he cited to you the study.

You know what, ladies and gentlemen of the Senate? There is not in North Carolina, one single minority district that has a majority-minority voting age

population right now. Yet, for ten years, all of them have elected – all but one has elected an African-American, and that one elects the candidate of its choice. It seems to me that the Voting Rights Act is doing exactly what Senator Dirksen and those who first enacted it in 1965 thought it would do.

Unless you suggest that we're going to forever be separated in this state on the basis of race, the Voting Rights Act would seem to contemplate we will create districts and we will work toward reconciliation where historically whites who haven't voted for blacks will feel free to do it, blacks who haven't voted for whites will feel free to do it, and we truly will have a democracy in this state.

That's what's happening in these districts. When you start out a district where you've got to have 60 percent or 55 percent black [103] people to elect a black legislator or black anybody else, and then that district goes down to first 45 then to 40, and people are voting across racial lines, blacks are voting for whites, whites are voting for blacks, isn't that the North Carolina that we want, or do we want to look out for our own political angle, preserving the status quo that distinguishes people based on race under the pretext of saying you've got to have now this heavier percentage again to get folk elected. I think not.

And I will tell you, the more I think about the effort, whether Senator Rucho likes the word "packing" or dislikes that word, when you are grouping all of the minorities in a place into the same district, you are discriminating against them. And when you are going the extra effort to reach out and get little fingers here and little toes there and other kinds of ways so that districts look like amoeba or other strange-looking sea creatures or sea urchins or some kind of grotesque shapes, as Sandra Day O'Connor called it in Shaw

versus Reno, it's getting to be ridiculous, my friends, and that's what these districts do.

I'm offended, but I'm offended for other [104] reasons. I live in Wake County. You know, Wake County was not one of the covered counties. Wake County has performed admirably in so many ways. It's less segregated than some of the other urban counties. That's why it is so tough to draw a district – Senate district that's majority black. Wake County is the most populous county in North Carolina now. Not by the Census, but by all other estimates, by planners and stuff over the last year. Most populous. 200,000-plus African-Americans live here.

And you look at District 14 on the Rucho map. You blow it up – I don't know how – it looks like a crab or lobster or some strange creature. Because they had to reach into precincts all over the place. When people have tried to live the dream of America and desegregate society because of the housing patterns in this county, this map has come up with a way to go find them in some of the most remote places you would think of and pull them into District 14. And you will find that same thing in these other urban districts in North Carolina.

I say I'm offended. I'm offended for two reasons. Number 1, this plan does two things. It [105] insults the white and black people in Wake County. First, it calls, I think, without justification at all, white people in Wake County racist. Because you tell them they won't vote for a black candidate. And the history of this county has been just the opposite. Four constitutional officers, and there have been times that two of those four have been African-American. We elect the County Commission countywide. Since the 1960s, there has always been an African-American on that County Commission, and oftentimes, more than one, in a

disproportionate manner to the population of this county.

Since the 1970s, this county has always elected judges to the district court countywide. This county has consistently voted for people, and the disparity study that Senator Rucho talked about is not a disparity study – a polarization study, I'm sorry – on current voting trends of people in Wake County. It's an historical document. So I ask you, my friends, to think seriously about what we're doing.

I want you to think that I believe in the people of Wake County, and I'm not going to do what this map suggests by saying that the people of my [106] district, which is 41 percent black, and which voted for me in the last election, an off-year election, not an Obama election, with over 66 percent of the vote, an indication that whites are voting for blacks, and you will find that in these other districts in North Carolina.

So that's why I'm offended by this, and others who represent Wake County ought to be equally as offended, by allowing our people to be put in those kinds of pigeonholes when it's not true. More importantly, this thing patronizes the intelligence of African-American voters throughout the state and especially throughout this District 14 that I represent.

Now, let me tell you a legal problem that you've got, whether you know you've got it, and I'm going to help emphasize it. You split 279 precincts in the Senate map. 70 or 80 percent of them are in black districts. You've been running around trying to eliminate ways that make voting easier. And when you split these precincts out of the 34 split precincts, voting tabulation districts in Wake County, 29 are in District 14. You know what that does to the elections process.

We have precincts in this county where [107] African-Americans will have to vote where there could be as many as 20 or 30 ballots in a single election. Because you split them in the Congressional race, some of them. You split them in the Senate elections, you split them in House elections and you split them different ways.

And then there are other reasons they may be split. You will hear from our county elections director, who worked here for a Republican, highly respected, one of the best election supervisors in the state, of the nightmare that you are creating in Wake County by splitting these precincts. And when you split them in inner city and black communities, you are discriminating against the people who live in those communities by making it more difficult for them to vote, by making it more expensive for the County to deliver the services that they want.

I've got to say, I was initially hurt, disappointed, not surprised, but disappointed in this map. Because I seriously thought that we had moved down the road a lot further than that would indicate. But then I learned that – from the hearings on Thursday, that a Mr. Tom Hofeller, a non-North Carolinian from the Republican National [108] Committee, was the one who had consulted on how you draw these maps. And I can understand how somebody not from North Carolina could really not give a hoot on how he characterizes North Carolinians. But I really expected more of my colleagues, all of us wanting the same thing for our state and our people.

And I will tell you that I'm convinced that politics and jurisprudence just haven't kept up with technology. And that's the lesson that we take from history, too. But I hope that your sense of fairness, your sense that we ought to be a state where racial

equality means something and that we ought to hope for a society where race really does not matter, would cause you to reconsider what you're doing in these maps.

When we look back – and I've said this before – in 1875, my grandfather, John Blue, was born in North Carolina, in a North Carolina that held out a hope, immediately after the Civil War, of total equality. My youngest brother was born in 1954, when our court again held out hope through Brown versus Board of Education, that we were moving the right way again in this state. And my two youngest granddaughters were born in 2009 when [109] we were all celebrating maybe we've – you know, whether you like Obama or not, but maybe we've moved to another chapter in race in this state.

And the lesson that I learn as I sit those little girls on my knee, all three of my granddaughters, the lesson that I learned is that the worst place that I could ever be is that somewhere down in history, I have to look one of them in the eye and say, when history gave me the opportunity, did I choose to be on the right side of it, or am I going to spend my old age explaining how I made the wrong choice, and then they wonder what made their granddaddy do this.

Now, some of you don't have grandchildren, but when they read what we do here today and see the direction that we take, believe it or not, the moral compass of the universe always bends towards justice and equality and opportunity. And we can look at the history of the world; that's where it bends toward. If you're on the wrong side of that history, it's tough explaining 25, 35, 45, 50 years later, when your kids have to explain it to people.

So I ask you, my colleagues, choose to be on the right side of history. Don't resegregate [110] our state. Don't

make the black community irrelevant to the debate. Accept some active black people in Republican districts. As thoughts start competing with each other, we get better ideas. That's what has made us the strongest country in the world. And if we seriously change that, then we're going to give up being that.

Accept competition. Accept an exchange of ideas, different viewpoints. It does nothing to take away from your ability to have the majority in this chamber or in the state. It's ideas that ought to sell, not efforts to get an unfair advantage in the political process. You know, I doubt that you will do it but I seriously hope that you will reconsider voting for this map, setting North Carolina on the wrong road again.

LT. GOV. DALTON: Senator Stein, for what purpose do you arise?

SEN. STEIN: To debate the bill.

LT. GOV. DALTON: You have the floor.

SEN. STEIN: Senator Blue, I endorse your comments wholeheartedly. And I want to elaborate on just one point that he made that I don't think folks have focused on sufficiently, which is the consequence of the extreme number of split voting [111] VTD's or precincts. I just got an e-mail this morning, all the Wake County delegation members did, from Cherie Poucher. She is the head of our Wake Board of Elections. She is a Republican, registered Republican.

She wrote us a letter. "The wake County Board of Elections reviewed the redistricting maps. we are concerned as in Wake County alone, there are approximately 40 split Senate VTS's, 48 split House VTD's and nine split Congressional VTD's. We are hopeful that changes can be made prior to final approval, to decrease the number. Split VTD's are extremely confusing to voters. There is a possibility of

18-plus different ballot styles in a single precinct, which will lead voters to question the correctness of their ballot. This questioning could lead to a dispute by the voter regarding the contest the voter is eligible to vote.

"The voter would then have to vote a provisional ballot as a jurisdictional dispute. In addition to creating voter confusion, splitting VTD's will increase the amount of resources necessary to train poll workers, print ballots and research and process provisional ballots.

Splitting VTD's will also make it difficult for [112] candidates of any party to determine election data by precinct. Thus, in order to limit voter confusion, minimize election training and processing expenses, and help candidates to have useful post-election data, we urge you to consider these comments prior to voting on the district lines."

Why are you all splitting up 40 VTD's in Wake County in the State Senate map? Why? The only explanation is because you want to reach out and grab every black person you can find and put them in Dan Blue's district. That is the only explanation. And for what purpose? What evidence of racially polarized voting do you have in Wake County? I asked that to Senator Rucho at his hearing last week. There was not a single piece of evidence he could cite that here in Wake County, there is any racially polarized voting history.

Dan Blue was elected in that district. Vernon Malone was elected in that district many times before. The percent of African-Americans in that district is about 40, 41 percent. And yet, as Senator Blue said, you insult the black and white voters of this county by saying we have to go out and grab as many blacks from as many different [113] precincts as we can find and

put them in Dan Blue's district. I urge you, just as Cherie Poucher, the Republican head of the Wake County Board of elections, reconsider these district lines.

LT. GOV. DALTON: Further debate. Senator Rucho, for what purpose do you arise?

SEN. RUCHO: See if Senator Blue would yield for a question, or two questions, actually.

LT. GOV. DALTON: Senator Blue, do you yield?

SEN. BLUE: I yield.

LT. GOV. DALTON: He yields.

SEN. RUCHO: Senator Blue, in 1995, is it true that that the General Assembly passed a bill requiring the use of whole precincts in drawing districts?

SEN. BLUE: The use of?

SEN. RUCHO: Whole precincts in drawing districts.

SEN. BLUE: Ask your question again, Senator Rucho.

SEN. RUCHO: Is it true, in 1995, that the General Assembly passed a bill requiring the use of whole precincts in drawing districts?

SEN. BLUE: If you say so. I don't know. I didn't lead the effort to require the use of whole precincts. It makes sense to use whole precincts in drawing districts, especially since the VTD's have been matched up with precincts in Wake County. That's what they are, the voter tabulation districts. And where you've got one, if there is more than one precinct, they are still totally contained in the same VTD.

SEN. RUCHO: Also, as a follow-up, Mr. President?

LT. GOV. DALTON: Follow-up.

SEN. RUCHO: All right. Is it not true that the 1995 bill that this General Assembly passed, and I think you were probably a member of it at that point, failed to receive preclearance approval under Section 5 of the Voting Rights Act?

SEN. BLUE: The 1990 bill?

SEN. RUCHO: The 1995 bill that we alluded to in the first question.

SEN. BLUE: I was not aware that there was a 1995 bill. There shouldn't have been a 1995 bill. We redistricted in 1991. There was a failure of the Justice Department to pre-clear the House bill, but that was on a district in a covered county. There was no failure to preclear in any of [115] the urban counties as I can recall in '91.

SEN. RUCHO: Thank you. Mr. President, I would like to submit into evidence a letter that came back from the US Department of Justice in February 13, 1996, and I see no reason to read it, which basically found that it was – that the -that this one provision in 1995 requiring whole precincts to be drawing districts was found to be not pre-cleared under Section 5 of the Voting Rights Act.

LT. GOV. DALTON: Let me – Senator Blue, I see you standing. I'm going to –

SEN. BLUE: I was going to ask you, you know, just to add a little levity, make an objection because of relevance.

LT. GOV. DALTON: Well, I'm going to – I was going to point out, this isn't a court of law. I'm going to reserve judgment on that because Senator Stein referenced the Board of Elections letter. I did allow the two Congressional statements into evidence if that's what we're doing here. I'll reserve judgment on that

because once we start letting everything in, we let everything in. So let me reserve judgment on that.

SEN. RUCHO: Mr. President?

[116] LT. GOV. DALTON: Senator Rucho, for what purpose do you arise?

SEN. RUCHO: To clarify the statement, if I may.

LT. GOV. DALTON: You can clarify the statement.

SEN. RUCHO: Okay. I think there has been enough discussion, and unfortunately you weren't privileged to be at the committee meetings regarding voting, VTD's and precincts. And this particular statement or decision that was handed down by the Justice Department, not giving Section 5 pre-clearance, is very relevant to the comments that were made earlier and I think it's very critical that it be included in this –

LT. GOV. DALTON: Well, let me say, I'm sure it is very, very relevant and my guess is, some judge will be ruling on that at some day, and also the statements from the Board of Elections. Whether it's appropriate to the debate here, I'm still reserving the ruling on that. We can always – if I decide to let it in, Senator Stein, I will certainly let you have that letter put in, and then we open some floodgates. I don't question the relevance of it; I question whether it's [117] relevant to the debate itself. It may be relevant to the legal issues. I'm not deciding that up here.

SEN. RUCHO: Question for the Chair.

LT. GOV. DALTON: State your inquiry.

SEN. RUCHO: Then, I would be delighted if I was allowed to, to read this in its entirety to make sure that it –

LT. GOV. DALTON: I think you came close to that just a while ago.

SEN. RUCHO: No, sir. There's about five pages here.

LT. GOV. DALTON: I'll reserve judgment on that. I don't think it's really part of the debate. That goes back to 1995?

SEN. RUCHO: It is a February 1996 ruling by the Justice Department which impacts the way districts should –

LT. GOV. DALTON: I'll reserve judgment. I'm going to talk to Senator Nesbitt and Senator Apodaca at a later time. I don't know that that's even relevant when it gets in court, if it gets there. But I'm still reserving judgment.

Any further debate at this point in time?

SEN. TILLMAN: Mr. President.

[118] LT. GOV. DALTON: Senator Tillman, for what purpose do you arise?

SEN. TILLMAN: Inquiry of the Chair.

LT. GOV. DALTON: State your inquiry.

SEN. TILLMAN: If we have accepted the Butterfield letter and the Watts letter, would it not be in all fairness to accept this piece of evidence, or either throw them all out?

LT. GOV. DALTON: I distinguish that in that those are Congressmen and we are dealing with the congressional districts. This is not a court of law. You're talking about 1995 opinions.

You're talking about letters from the Board of Elections. And I can imagine that this journal can be the biggest journal we've ever seen. We do have a court

reporter here. I think the argument has been made. I haven't ruled one way or the other but I would like to proceed with the debate and then we'll see where we are at the end of the day. But I do see a distinguishing characteristic between the congressional letters and what was just presented.

Any further discussion and debate?

SEN. RUCHO: Mr. President?

SEN. NESBITT: Mr. President?

[119] LT. GOV. DALTON: Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: Ask if Senator Rucho will yield for a question.

LT. GOV. DALTON: Senator Rucho, do you yield?

SEN. RUCHO: Yes, sir.

SEN NESBITT: While we are all sitting around and enjoying ourselves, would you mind getting a copy of that to the rest of us so that we can see what it says?

SEN. RUCHO: I'd be –

SEN. NESBITT: We passed out copies of everything that we put in the record.

SEN. RUCHO: I would be delighted to do so, and it will be done momentarily.

Mr. President?

LT. GOV. DALTON: Senator Rucho, for what purpose do you arise?

SEN. RUCHO: Inquiry of the Chair

LT. GOV. DALTON: State your inquiry.

SEN. RUCHO: Can this be spread upon the record as a means of getting it on record?

LT. GOV. DALTON: That's the judgment I am reserving, if I do allow it to be attached to [120] the journal or stated verbatim. We read the two others in verbatim. They will be stated verbatim. But this is not a court of law, gentlemen and ladies. This is a debate on whether you're going to pass this bill or not. I think we're getting far afield. Perhaps I should not have allowed the Congressional letters to be read in. I deemed that relevant at the time and, you know proper debate, but perhaps that was an error. But at this point in time I think we would open the floodgates. But I will consider that as we go along.

Any further discussion or debate?

SEN. APODACA: Mr. President?

LT. GOV. DALTON: Senator Apodaca, for what purpose do you arise?

SEN. APODACA: We need to take about a 15-minute recess, sir.

LT. GOV. DALTON: Without objection, the Senate will stand in recess, let's say, until 4:45.

(RECESS, 4:25 - 4:50 P.M.)

LT. GOV. DALTON: The Senate will come back to order. Members will please take your seats.

Senator Rucho, in response to your inquiry, I'm not going to allow this to be actually [121] read into the journal or be a part of the journal; however, I am going to submit it and direct that the Clerk maintain a file that you requested that it be submitted and also give a copy to the court reporter. So if any Court is looking at it, if they feel that it is part of the debate, it should have been there, that it was unfair and caused an erroneous vote or something, they can do that.

I don't think that's going to be the inquiry before the Court. I think you will have an opportunity to submit

evidence and legal argument to the Court but out of all due caution, I would excluded it from being spread upon the journal but that the Clerk maintain a file with this in it. And if anybody has anything else they want to submit, then we can consider that.

Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: Thank you, Mr. President, I have two groups of newspaper articles, editorials and so forth, that we wanted to get in the record. I was assuming that we could just simply give them to the Chair of the Committee and he could put them in the record. But since he is concerned about it being put somewhere else, I'd like to put these [122] wherever he put his.

LT. GOV. DALTON: Well, we'll put – Senator Nesbitt, I will happily receive those. We'll put those in the same file. We will also give copies to the court reporter so that any Court looking at it will know what transpired.

Okay. Members of the Senate, we are back to the debate of the bill. Any further discussion or debate on the Committee's substitute to Senate Bill – Senator McKissick, for what purpose do you arise?

SEN. MCKISSICK: Send forth an amendment.

LT. GOV. DALTON: Senator can send forth your amendment. Clerk will read. Members have copies?

SEN. MCKISSICK: Yes, they do, Mr. President.

LT. GOV. DALTON: Clerk will read.

CLERK: Senator McKissick moves to amend the bill.

LT. GOV. DALTON: Senator McKissick is recognized to explain Amendment 1.

SEN. MCKISSICK: The amendment which I am setting forth is, I am setting forth in my capacity chairman of the North Carolina Legislative Black [123] Caucus. Before I make remarks, I would certainly like to address a few issues from the outset in terms of issues related to timeliness in terms of submittal of alternative plans. I would like to have it officially noted that it wasn't until July 11, 12, that we as Democratic members of the General Assembly actually saw a full-blown map of Legislative districts. There was a public hearing on the 18th, and of course, today is the 25th, so we're really looking at this being rolled out and back before us as a body in really what amounts to approximately two weeks. So to the extent to which there was – might have been said many, many months to develop these plans, I think that what certainly the North Carolina Legislative Black Caucus wanted to do was see what plans would be forthcoming and see if they were plans that we could evaluate and perhaps embrace, not knowing what they would actually consist upon.

One thing which we did try to do in the plan which you see before you, and is identified as possible Senate districts, is try to come up with a plan that we thought was fair, reasonable and balanced in every respect. I do have a prepared statement, which I will go ahead and read into the [124] record, and then get into a little bit of discussion as it relates to this. As you all know, I'm one of those persons who tends to speak without notes and without reading statements but today, to have some of this data as part of our record, I have chosen to do otherwise.

I also want to thank Bill Gilkerson, who is here with me, and David Harris, who have worked with me in connection with this effort for some time now.

With that said, what I'd like you to know is that the Caucus brings you a unique and critical perspective to this debate because many of our members represent districts that include one or more of the 40 North Carolina counties covered by Section 5 of the Voting Rights Act and are districts that were initially mandated by the 1986 Gingles U.S. Supreme Court decision, enforcing Section 2 of the Voting Rights Act. Long before 2002-2003, North Carolina Supreme Court Stephenson decision which mandated that all Legislative districts be single-member districts, the U.S. Supreme Court mandated single-member minority districts be drawn in 15 North Carolina counties. Those were Northampton County, Hertford County, [125] Gates, Bertie, Chowan, Washington, Martin, Halifax, Edgecombe, Mecklenburg, Cabarrus, Forsyth, Wake, Wilson and Nash.

The Voting Rights Act does not require proportional representation of blacks in the Legislature. Section 2 does require that districts are not drawn in a manner such that minorities, in this instance African-Americans, have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. Further, Section 5 requires that before the State can use a redistricting plan, the State must prove that the redistricting plan first does not have any discriminatory purpose, and second, does not have the effect of weakening minority voting strength in covered jurisdictions, which we all commonly know as retrogression.

The starting point for Section 5, retrogression, whereby a proposed plan is compared to the benchmark, which is the current plan that we are presently using. In this case, that's the 2003 plan. Even if minorities are less than 50 percent of a district,

if they have the ability to elect candidates of choice, that ability cannot be [126] diminished.

Put another way, the diminution of minority voting strength in districts where they do not have a majority but have the ability to impact elections is a violation of Section 5. In preparing the amendment before you, the Caucus was mindful of the requirements of the Voting Right Act. The Caucus was also mindful of the mandate of Stephenson. Stephenson required the creation of minority districts, referred to as VRA disctricts, prior to the creation of non-minority districts, consistent with federal law in a manner having no retrogressive effect upon minority voters.

However, Stephenson also required, to the maximum extent practicable, that such minority districts shall also comply with the legal requirements of the whole county provisions of our State Constitution.

Finally, we were cognizant of adhering to the one person, one vote requirement set forth by the United States Supreme Court decisions and by Stephenson. Our staff, which included Bill Gilkerson, a demographer and an attorney, with significant prior experience in drawing redistricting maps for Legislature and Attorney [127] David Harris, with voting rights litigation experience dating back to 1983, have been working diligently to help produce several maps. The maps which I speak of before you today is the one identified as possible Senate district. The map received the input of Caucus members – and when I say Caucus members, I'm referring to the North Carolina Legislative Black Caucus – because we looked at it in connection with our districts, and we – many of our members understood the communities of interest within our district and the needs of those districts.

We also looked at it in terms of considering the communities of interest of other members within the respective districts in trying to make sure that we respected those communities of interest as we tried to configure a map. The map we are proposing better complies with the requirements of the Voting Rights Act, Stephenson, and the traditional districting principles better than the majority bill that was submitted, Senate Bill 455.

First, the Rucho plan assumes that compliance with the Voting Rights Act requires the creation of minority districts that are greater [128] than 50 percent black voting age population. This is an incorrect assumption. Note that I said that Section 2 of the Voting Rights Act requires the districts are not drawn in a manner in which minorities have less opportunities than other members of the electorate to participate in the political process and elect representatives of their choice. I also noted earlier that Section 5 requires that redistricting plans, number one, not have any discriminatory purpose; number two, not have the effect of weakening minority voting strength in Section 5 jurisdictions.

All of the African-Americans of the North Carolina Senate currently have voting age black populations that are less than 50 percent. And I point that out because that's extraordinarily important and we feel that that's something that this body should be cognizant of and aware of. Higher percentages might have been necessary back in the '80s when Gingles was litigated and decided. But not today. So why plant higher percentages of blacks in minority districts when it's not necessary to do so.

The bill that is before you today resulted from the erroneous interpretation of the [129] law and is open to a challenge under Section 2. Section 2 also prohibits packing of blacks in districts and minority voter

diminution in districts. There were a number of cases directly on point and when the packing results in diminished ability for blacks to have any say in the election of senators in neighboring districts, preclearance under Section 5 becomes more problematic and difficult. Furthermore, even if Section 5 preclearance was achieved, Section 2 litigation is likely.

The Caucus plan eliminates this danger in an important way. The minority district followed the footprints of current districts. Adjustments were made to account for changes in population to comply with the one person, one vote requirement and to avoid retrogression. Second, in several situations, the original plan runs counter to traditional districting principles such as compactness, continuity and respect for political subdivisions, recognizing Stephenson. Stephenson also commands that communities of interest should be considered in the formation of compact and contiguous electoral districts. For example, my district, Senate District 20, under the current [130] plan is completely contained within Durham County.

And when I say the current plan, I'm going back to the 2003 plan. The proposed plan creates a district that includes parts of Durham County and all of Granville County. What communities of interest is this between Durham County and Granville County? The socioeconomic conditions of the black communities in those counties are totally different. It's very hard to find communities of interest connecting these counties. One county is urban with politically cohesive groups and another is completely rural. And it's unnecessary to comply with the Voting Rights Act to link these together.

Furthermore, if you look at my district in particular, you have places there like Duke University, Duke Medical Center, Research Triangle Park, all of which are in Durham. North Carolina Central University. Contrast it to Granville County and we have places like Stovall, a wonderful community but not very linked with communities of interest. Butner, Creedmoor, Oxford, Stem, very contrasting in many respects.

Third, to ensure full compliance with Stephenson, our staff did draw groupings of [131] clusters first. Some clusters were drawn larger to fully encompass the minority districts. The end result of our work is a map which complies with Stephenson better than the proposed plan. The end result of our work also better insulates the State from any type of Stephenson challenge than the proposed plan.

Fourth, the bill better insulates the State from any Shaw challenge than the Rucho plan. It is one thing to draw minorities first but to draw minority districts with such odd and irregular shapes as the Rucho plan does begs a Shaw challenge. If the only reason it draws such odd and irregular districts was race, a Shaw challenge is likely successful.

In sum, the amendment we have proposed avoids Voting Rights Act, Stephenson and Shaw challenges as compared to proposed plan. A comparison of the plans with Stephenson in mind is useful here in terms of the number of split counties. 2003 plan, which we are currently under, has 12. The proposed Rucho plan has 19. The one that we have provided with you today, there are 17. Therefore, with Stephenson in mind, our bill does a better job of complying with Stephenson by [132] splitting fewer counties than the Rucho plan. Those districts are compact and will allow us to be in

better compliance with Gingles, thereby avoiding a Section 2 challenge.

Another comparison is the number of voting tabulation districts, which are – we were going to call precincts because it was based upon precincts back in 2008 and the number that are split. In terms of the 2003 plan, if you use today those voting tabulation districts, there would be 79 border tabulation districts split. Underneath the proposed Rucho plan, there are 257 voter tabulation districts split; underneath our proposed plan, there are only 10. And I repeat that, 10 voting tabulation districts split. It's unnecessary to go up to the 257 or even go up to 79.

We have several concerns with respect to the radically high number of split precincts in the proposed plan. Number one, it opens the door to noncriminal election irregularities. That can hold up seating of a Senator or Representative while County and State election boards sort out the results and may require new elections. On election day, precinct officials in a split precinct will [133] have more than one type ballot style and must be careful to give the right ballot to the right voter, based on the part of the precinct that voter lives in.

Precinct officials work at least 14 hours a day on election day, and they get tired. In a -if the turnout is high, the polling place can be chaotic. The consequences of not giving voters the right ballots can be dire. For example, in 2006, there was a close election in a Mecklenburg County district. One of the precincts was split with a -with only a small portion of the precinct in the district in question. But the precinct officials mistakenly gave all the voters the ballots with the one district race on it. A new election was narrowly averted.

In the 1990s, the same type of error occurred in a Duplin County precinct, which did result in a new election for a House seat. The State Board of Election tries hard to train people to avoid this kind of error but the more precincts are split, the harder it is to prevent. History has shown us that the problem with people receiving the wrong ballot is a much bigger problem than any allegation of voter fraud. We simply should avoid [134] to the greatest extent possible, the danger of a lengthy – excuse me – of a legally registered voter, unbeknownst to him or her, voting for a Representative when they are not in that particular Representative's district.

Number two, one thing that came up last week was the idea of changing precinct lines to kind of conform to the new splits that are occurring within these precincts. I would like to point out that precinct lines are drawn on population growth and the availability of polling places. Moreover, if you change a precinct to conform to a House plan, for example, it may not conform to a Senate plan, and it may not conform to a Congressional plan. If precincts are split in different ways and different plans, it will only frustrate any corrective action that might need to be taken.

Third, split precincts have become easier to administer in some respects because of early voting. These early voting sites are staffed and equipped to process any voter in the county, regardless of what precinct or what district one might be from. However, if early voting is reduced, and we all know that there is a bill out [135] there that would reduce the amount of time for early voting, we could end up with much more severe problems in this regard. The doubling and tripling of split precincts, combined with extra turnout on Election Day would combine with the stress of election officials and the likelihood of error is really a major crisis waiting to happen.

If you take that into effect with also what has been discussed in terms of a Voter ID bill, which has been passed, you're talking about creating a disaster – potential disaster in many areas of these 257 split voting tabulation districts or precincts. We are concerned that the splitting of more precincts will have a disproportionate impact on black voters.

The Voting Rights Act covers any election practice, not just redistricting. Any abridgement of the right to vote that is based on race or color, whether intentional or not, is open to a Voter Rights Act challenge. Again, our amendment is very – will very significantly reduce the danger of Voting Rights Act challenges, so litigation and the election process can be avoided to the maximum extent possible.

One thing which I would like to do is [136] just kind of review kind of a summary of some of the attributes of our particular plan. First of all, if you would just look at the number of pages. And I think ours is so few pages because we have come up with a plan that doesn't require the splitting of all these precincts. The Rucho Senate 2 plan is 106 pages. We've got a plan here that's 10 pages long.

In terms of the number of split counties, if you go back to the existing plan, there are roughly 13 of them. If you look at the Rucho plan, there are 19. We were able to come in at 17. Look at the number of split precincts which we have talked about a lot and I raised questions about last week.

2003 plan, 79 split precincts. Underneath the Rucho plan, 257 split precincts. We were able to come in at eight split precincts. In terms of the number of county clusters underneath the 2003 plan, there were 31 of them. Underneath the Rucho plan, there were 25. We were able to come in with 24.

In terms of the number of one district county clusters, in this particular case both the Rucho plan and the one that we have proposed come [137] in both at 13. If you look at the number of districts won by McCain, 55 percent or more, in 2008, our plan would have produced 24. Rucho plan looks like it's about 26. Under the existing 2003 map, there would have been 22. In terms of the number of districts won by Obama, under the existing plan it would have been 16. Underneath our plan, it would have been 17, and the Rucho plan looks like it would have come in about 15.

And if you use as a measure of compactness, a number of miles in terms of the perimeter miles of the boundaries of all of the district boundaries within a configured plan, if you look at the Rucho plan, it's way up there at about 11,2823 miles. Ours comes in at about 8,887 miles. But if you put that in context, the difference between them would be enough, if you were measuring in air miles, to go from North Carolina to California. So we're talking about a lot less – lot less miles, and it really is a measure of compactness.

In terms of double-bunking, if you look at the plan that's been put forth by Rucho, it comes up with about five races that would be double-bunked. We've been able to get it down to [138] three. Nobody wants a double-bunk if we can avoid it, ever. But unfortunately, with the shifting of populations to many of these urban areas and with the rules set forth in Stephenson about how we should go forth and try to develop clusters and you are inevitably put in a point where there will be double-bunking of some members.

In terms of minority populations, I think that's something that, you know, I want to speak to in particular. Because if you look at the district I'm in right now, over in Durham, I have about 44 percent in terms of the African-American voting age population.

There is not a single member of us serving here in the Senate that goes up to this 50 percent plus one that has been proposed in the Rucho plan.

And I might add, whenever I run for elected office, I end up with about 74, 75 percent of the vote. So I'm getting an awful lot of votes from people who are non-African-Americans, and that going back two decades, almost, to '93, when I first ran for City Council in Durham on an at-large basis against other white opponents that were in the race. I was able to garner support from those that were conservative within our community, those [139] that were moderate, those that were progressive, and have been able to maintain similar types of coalitions, not just from running for reelection from City Council but also when I've run for State Senate.

I think it points to the fact that in many, many respects, we have developed multiracial coalitions in communities like Durham and counties like Durham. Those same type of multiracial coalitions have been built throughout the state of North Carolina. We have built bridges, and we should be proud of the bridges we have built. We've built them successfully. We've tried to get to the point where when it comes to racially polarized voting, that it is minimized significantly. And to be quite candid with you, I'm not sure this racially polarized voter study that was done really allowed you perhaps the information that you needed to individually graph districts in a way that took into account whether there was racially polarized voting or whether there was not racially polarized voting in areas that were crafted.

Why do I say that? Because when it comes to all of the African-American districts that have [140] been crafted, it's a one-size-fits-all solution: 50 percent plus one. It doesn't make a difference whether you came

from an area that was racially polarized voting or whether you didn't come from one of those areas. So in my mind, that one size fits all just doesn't work. Furthermore, under Section 2 of the Voting Rights Act, you don't have to get there. It's not required as a matter of law.

And what have we tried to do with the plan before you? Respect Stephenson. To the maximum extent practicable, we did not go out and split counties. We tried to keep them as whole as we could except when it was necessary under Section 5 to go ahead and split those counties. And as I've said repeatedly now, if you think about one of those units' integrity which we should try to respect, not just because of community of interest arguments but because they do, in fact, define certain areas that people either reside within or they identify with, and that's those voter tabulation districts, I don't know how you argue that 257 makes sense, when you can do it with a plan that has only eight.

Only eight, entire state. It's something [141] that we should look at, it's something that we should examine, it's something that we should be thoughtful about. And only time frame that we've got that we've got to work with is the time frame that is artificially imposed by this body. If it takes us an extra week, it takes us an extra two weeks, if we can be thoughtful, if we can be deliberative, if we can be inclusive, if we can get the best plan, a fair plan, a balanced plan, a reasonable plan for the state of North Carolina, then that's what people elected us to do and that's what we should try to accomplish.

So with that said, I'd like to simply say that I hope that you will support this amendment. We do believe it offers a viable alternative. If we could have gotten the plan that came forth from Rucho more than two

weeks ago, then perhaps we could have studied it and provided some alternatives at an earlier period of time. Certainly in the schedule that was prepared, there was not some time line in there to allow for the incorporation of the input that I understand has been lacking up to this point in time. Had that been structurally accounted for when the original plan was crafted, then perhaps there would have [142] been a greater opportunity before now for this type of plan to have been considered.

But with that said, I hope that you as my colleagues, regardless of what side of the aisle you're from, whether you're from the east, the west or the Piedmont, that you will think about what is in the best interest of the state of North Carolina, that you will embrace a plan that will allow us to respect communities of interest, to respect our neighborhoods, to respect our municipalities and our small towns, but most importantly, will empower the citizens and the residents of North Carolina to elect candidates of choice.

LT. GOV. DALTON: Any discussion or debate? Senator Brunstetter, for what purpose do you arise?

SEN. BRUNSTETTER: See if the amendment sponsor will yield for a few questions.

LT. GOV. DALTON: Senator McKissick, do you yield?

SEN. MCKISSICK: I will.

LT. GOV. DALTON: He yields.

SEN. BRUNSTETTER: Thank you, Senator McKissick. And some of these questions are because [143] we've had a fairly short time to look at this plan.

I heard a bunch of statistics come out in your presentation. I might have missed this one.

How many majority-minority districts does the possible Senate districts amendment create?

SEN. MCKISSICK: There are no majority-minority districts as such.

SEN. BRUNSTETTER: Okay.

SEN. MCKISSICK: What we do have are districts that will, in fact, comply with the Voting Rights Act, either under Section 5 or Section 2. If they do in part involve counties that are subject to Section 5, then we pay particular attention to those. We avoid any retrogression arguments.

SEN. BRUNSTETTER: Follow-up?

LT. GOV. DALTON: Follow-up.

SEN. BRUNSTETTER: I know that you've been presenting on behalf of the Black Caucus, been involved with a number of these discussions. Are you aware of any plans prepared by Democrat leadership, by the Legislative Black Caucus or others that do include majority-minority districts. And if so, how many?

SEN. MCKISSICK: Well, at this point in [144] time, I mean, I think the best focus of our conversation would be on the amendment that's before you and the Senate plan that is before you. There is a House plan that has been crafted. It was presented this afternoon on the House floor, shortly before we took up debate on this particular one. There are some districts there that would probably constitute those that would be in the minority majority area. Perhaps those that would be from Butterfield, perhaps the one dealing with Representative Bryant. I don't want to start picking things out of the air without looking at the plan because I might, in error, misidentify something that I should appropriately identify.

SEN. BRUNSTETTER: Follow-up?

LT. GOV. DALTON: Follow-up.

SEN. BRUNSTETTER: So to be clear, then, there – as far as the Senate goes, you're not aware of any other plans that have presented, you know, a greater number of majority-minority districts than what your plan has?

SEN. MCKISSICK: Well, what I'm doing is addressing this particular one. And I think that's best for me to focus upon, as opposed to what other plans may be out there that may or may not be [145] introduced. So I'd prefer to reserve comment except on what's before you.

SEN. BRUNSTETTER: Follow-up?

LT. GOV. DALTON: Follow-up.

SEN. BRUNSTETTER: Senator McKissick, you – you've – I understand. I'm kind of learning all this as we go, and I understand what a majority-minority district is. That's fairly intuitive. You have talked, I think, during the hearings, I think Senator Nesbitt mentioned something today, about it being just important that minority voters are able to influence the outcome of an election under the Voting Rights Act. I was wondering if you could cite a case or statutory reference or something that defines what an influence district is.

SEN. MCKISSICK: Well, certainly influence districts have been addressed in the past. I can certainly refer to our counsel here to see if they want to identify a specific case dealing specifically that they might want me to name or target. I think if you go back and look through, you know, information that is published through the United States Department of Justice, data dealing with the Voting Rights Act, I

mean, [146] typically these influence districts, for more of an anecdotal way of referring to it, are, to me, those that certainly allow for perhaps the African-American population that is voting age population within those districts to have a substantial influence on the outcome of election in terms of perhaps being able to coalesce or establish coalition with other groups to elect a candidate of choice.

SEN. BRUNSTETTER: Follow-up?

LT. GOV. DALTON: Follow-up.

SEN. BRUNSTETTER: Are you aware of any minimum percentage of African-American voters that must be in a district in order to have an influence district?

SEN. MCKISSICK: I don't think there is a minimum number that have to be of an influence district. Sometimes influence districts may have 20 percent. I mean, they may have 25 percent. I mean, what we have here on this particular plan, if you were to look at it today in terms of what I would call are kind of the African-American districts, total voting age black population, that's including those that are identified as mixed-race black, would range from, I'd say, 48 [147] percent in one district, 49.74 in another, 42.04, 44.98, 44.44, 47.52, 46.98, 44.98.

One thing that we can say is that in none of these areas do we have populations that are exceeding the 50 percent plus one, but they have consistently identified, except for one district here, electing an African-American to the North Carolina Senate. And I think all of us that are here today feel as if those types of numbers and percentages are appropriate and that the Voting Rights Act, in many respects, from all of what it's done in the past, has enabled and encouraged people to establish these multiracial coalitions to elect

candidates of choice. One instance here, the candidate of choice would happen to be white as opposed to an African-American. So, I mean, and that's appropriate.

SEN. BRUNSTETTER: One last question?

LT. GOV. DALTON: Last follow-up.

SEN. BRUNSTETTER: So as I understand it, then, there is really nowhere that I could go to look if I wanted to get – if I wanted to find out what the percentage range is on an influence district. It's kind of a –

SEN. MCKISSICK: Let me –

[148] SEN. BRUNSTETTER: – judge it by the circumstances.

SEN. MCKISSICK: – have a minute or two.

(Mr. McKissick confers with counsel.)

Other than simply saying there is a number of federal cases decided by the federal courts, I wouldn't want to sit here and identify those cases by name, per se, but we could certainly obtain that information for you and share it with you.

SEN. BRUNSTETTER: Thank you, Mr. McKissick. I wish you would. I would be very interested in that.

SEN. MCKISSICK: Sure.

LT. GOV. DALTON: Further discussion and debate?

SEN. RUCHO: Mr. President?

LT. GOV. DALTON: Senator Rucho, for what purpose do you arise?

SEN. RUCHO: Debate Amendment Number 1, which is –

LT. GOV. DALTON: You have the floor.

SEN. RUCHO: Yes, sir. Thank you. That's possible Senate districts.

We have been waiting a very long time, [149] actually a lot of folks have said my hair has gotten gray in the last month, waiting for some input on these maps from Senator McKissick. We've been in a lot of dialogue but this is the first time we've had a chance to see this, early this morning.

I will say to you, we did have a chance to study the possible Senate district maps, and if we were to adopt Senator McKissick's map, we open the State up to numerous possibilities of the VRA Section 2 lawsuits. Also, we believe that his plan does not comply with the Stephenson criteria; therefore, I would recommend that we vote no on the possible Senate districts amendment as Senator McKissick has presented it.

LT. GOV. DALTON: Senator Blue, for what purpose do you arise?

SEN. BLUE: Will Senator Rucho yield for a question?

LT. GOV. DALTON: Senator, do you yield?

SEN. RUCHO: Yes, sir, a question.

LT. GOV. DALTON: He yields.

SEN. BLUE: Senator Rucho, you said that this map by Senator McKissick would open us up to a Section 2 claim. Do you mind identifying the [150] specific districts where you think that the State would not prevail in the McKissick districts?

SEN. RUCHO: The –

SEN. BLUE: And the basis for your –

SEN. RUCHO: Ready?

SEN. BLUE: I'm ready.

SEN. RUCHO: Okay. There's no purpose for me to speculate. It would be a significant issue dealing with the Bartlett versus Strickland.

SEN. BLUE: Another question?

LT. GOV. DALTON: Follow-up.

SEN. RUCHO: Yes, sir.

SEN. BLUE: Do you mind explaining to me how Bartlett versus Strickland applies to the district in Durham that is District 20, under the McKissick plan, or District 14, the district in Wake County under the McKissick plan?

SEN. RUCHO: I think our – the statements that I have made, along with Representative Lewis, is very clear. We've -numerous statements plus a significant amount of debate yesterday clarified the fact that there would be some serious concerns with the Section 2 liability. So that is what I'll base my answer on right now.

[151] SEN. BLUE: One further question, Mr. President?

LT. GOV. DALTON: One final question.

SEN. BLUE: Could you explain to me how Senator McKissick's plan in District 27, which is a Section 5-covered district, would be successfully challenged in that it is both compact, it is minority, it has performed consistent with what it was designed to do in 2003. It has consistently elected an African-American Senator since the 1991 redistricting. How would it be subject to reversal on a Section 2 or Section 5 basis?

SEN. RUCHO: Senator Blue, I think the statements that we have made all along pretty much clearly delineates what we would follow as far as the Voting Rights Act and the Stephenson decision. I think I'm probably the last person that should give you legal

advice on this. So that would be based on the statements that we have made previously.

SEN. BLUE: Debate the amendment, Mr. President?

LT. GOV. DALTON: Senator Blue has the floor to debate the amendment.

SEN. BLUE: Ladies and gentlemen, I think [152] that these districts, especially these minority districts, are heads and shoulders above those that are in Rucho 2. First, these districts respect what the Voting Rights Act was intended to do. I heard some comments that once you got a minority district, that it's going to be that way forever. I will not accept that as allowed by our Constitution because we are an evolving state, and our relationships are evolving.

And again, the Voting Rights Act was aimed at hoping that we can put all of this discussion about race in our history. Because then we truly will be that beacon for all of the other countries across the world. And if, in fact, you took the approach that when a district started performing effectively, you're going to jack it back up to 50 percent, then you'll never get away from having these racially-based districts.

And I think all of us ought to really hope for the day when we can move away from it. And if these districts have performed the way the Voting Rights Act was intended for them to perform, to move us to that goal so you don't need the Justice Department or Federal Court or anybody else having to tell you that you've got to draw certain [153] kinds of districts, then all of us ought to work toward it. And any effort to do less is an insult to the people of this state and this country.

So I think that the McKissick districts are considerably better, and unlike Senator Rucho said, they respect the North Carolina Supreme Court much

better, in Stephenson, because they don't split as many counties. And Stephenson said, if you can draw minority districts without splitting counties, that's your first responsibility, since you draw those first.

This one went partially down that road because it splits fewer counties, and I think it overall is a better map. I hope you'll support the amendment.

LT. GOV. DALTON: Senator Berger of Franklin, for what purpose do you arise?

REP. BERGER: To see if Senator Rucho will yield to a question.

LT. GOV. DALTON: Senator Rucho, do you yield?

SEN. RUCHO: Yes, sir.

SEN. BERGER: Senator Rucho, can you provide to the members of the Senate the legal definition of racially polarized voting?

[154] SEN. RUCHO: Senator Berger, that is outlined in the statement that is in the Legistor's Guide and also in the statements that Senator -- Representative Lewis and myself have put out. And reality is, its very clear, and hopefully you've read that material and you should have an answer to that question.

SEN. BERGER: Follow-up question?

LT. GOV. DALTON: Follow-up.

SEN. BERGER: Senator Rucho, as you know, in order to prove racially polarized voting, the Gingles decision makes it clear you have to look at actual elections in each of these individual districts. Will you make available to the members of this body the elections that y'all reviewed to determine that Senator Mansfield's district needed to be bumped up to over 50 percent, Senator Robinson's district needed to be

bumped to over 50 percent, Senator Jones's district needed to be bumped to over 50 percent, Senator Blue's district had to be bumped to over 50 percent, Senator Graham's district had to be bumped to over 50 percent, and Senator Dannelly had to bumped to over 50 percent? Will you – can you make the elections that you've reviewed that established that they [155] were all in districts that the voting was so polarized that they needed more African-Americans put in their district?

SEN. RUCHO: That's your question?

SEN. BERGER: That's the question. Make it – will you make it available to us?

SEN. RUCHO: Well, it is available. If you go online, you will see the polarization report that was submitted, if you've read that. I hope you have.

You will also see one that came from Anita Earls that was very clear, and then during the debate or the public hearing, the last one we had in Wake County, Mr. Joyner, who is with the NAACP, said that there was racial polarization in North Carolina. And, you know, I'm not sure how much clearer than that – you can look at all the details in those reports that are listed in the -off the website for redistricting.

SEN. BERGER: May I speak on the bill itself, the amendment itself?

LT. GOV. DALTON: Senator Berger of Franklin has the floor to debate the bill.

SEN. BERGER: The amendment.

LT. GOV. DALTON: The amendment, I'm [156] sorry.

SEN. BERGER: There's a lot, of irony that the Legislative Black Caucus is coming forward with a map that they have put forward as fair and legal and

protects the interests of African-Americans in this state and yet the majority party says that – trust us, we will look out for you, we will do best for you.

In order to consider race in anything that the government does, the 14th Amendment requires that there be a compelling state interest. That if you do not have a compelling state interest, you can't consider race. And so it's important that we look at the history of each of these districts, not the history simply of 20 to 30 years ago, but the history since we've had the impact of the Voting Rights Act. And I think this is the point that Senator Blue has tried to drive over and over again, Is that we have had a positive impact on the Voting Rights Act. White people in this state, in many areas of the state, will vote for an African-American candidate over a Caucasian candidate. They will look past race.

All our African-American senators sitting here today have been elected in districts that did [157] not have African-Americans packed to where it was over 50 percent. I submit to you that what you're sending up here is a Section 2 challenge in which you have violated the rights of African-Americans in this state by considering race in a manner that is detrimental to them.

Now, each of you know that there was a time when many, many parts of this country needed to have forced bussing as a method of addressing the inequity of separate but equal in the public school systems. But the Supreme Court made it clear that when that history begins to change and that history of racial discrimination is no longer a factor in the behavior of where people live and where they go to school, then you can no longer consider race as the predominant factor.

You've got ample evidence here. I mean, if you look at Senator Blue's district, this district plan that he has been elected under is the same plan that Senator Malone was elected under. That's at least four elections in a row in which an African-American candidate in that area has won without drawing the district with a predominant emphasis on race. And I would submit to you, as this things works it up to the Supreme Court, the [158] Supreme Court is going to say that in many of these districts – now, I agree with Senator Rucho that there is some racial polarization in North Carolina. It hasn't gone all away. But you've got to look at each of these individual districts. There were 11 states in the Confederacy. Eight of those states, when the Voting Rights Act was passed, the entire state had to go under Section 5 pre-clearance because of the history of racial discrimination in voting.

North Carolina's entire state was not required to go the entire state under the Voting Rights Act. 40 counties. One of the other three states that the entire state was not required to go under the Section 5 of the Voting Rights Act, the entire state, was Florida. And what did we have happen in 2008? Florida and North Carolina were two of the states – two of the three Southern states that Barack Obama won. It is a mockery to the people of North Carolina, to the people in your own political party, to suggest that North Carolina is no different than Alabama and Mississippi. Our voting history suggests otherwise, and the courts are going to look at that.

If you don't listen to us now, you'll [159] listen to us later when we all come back here and we redo this map. Because you haven't looked at these individual districts that each of these African-Americans represent. You have, across the board with every one of their districts, packed their districts over 50

percent. By his own admission, Senator Rucho acknowledged that race has been a factor in this districting process. And I think the courts are going to strike this down. We have an opportunity to fix it now, and I think that's what we should do, and I support the proposal that Senator McKissick has put forward.

LT. GOV. DALTON: Further debate?

(No response.)

LT. GOV. DALTON: Hearing none –

SEN. ROBINSON: Mr. President?

LT. GOV. DALTON: Senator Robinson, for what purpose do you arise?

SEN. ROBINSON: To speak on the amendment.

LT. GOV. DALTON: You have the floor to debate the amendment.

SEN. ROBINSON: I simply want to say that in this debate I certainly – usually don't yield to anyone speaking for me, but since this has [160] really been about legal knowledge, I've yielded certainly to the attorneys in this room. But Senator Rucho, like you, I'm a normal person, and so I do have to say for the normal people like me who were elected, that I want to support Senator McKissick. We did participate in drawing the districts as the majority asked us to do, and we certainly had knowledge in terms of the districts and the people we represent.

For my own district, some of you may not know that this historically was a district represented by Senator Bill Martin, who is deceased; Senator Katie Dorsett; and now myself, of course. But different from the others, I was in a three-way race. One Republican and another Democrat and myself. And even in the midst of that, in a 46 percent minority African-American

representation, I still won 45 percent of the vote or more.

And so, my point is that I live in Pleasant Garden. Pleasant Garden is majority Republican and white. And I have been chief judge at my precinct for about 10 years, and I respect all the citizens of my precinct in terms of their right to vote the way they choose.

[161] I respect the fact, also, that some of them voted for me because they respect me as a person who can represent them. And I think that's very important. I think it's unfair that you would take out the majority of my precinct out of my district. And so the citizens in my community could not, except for a little part, support me.

I don't think it's important – it's necessary to move the percentage of African-Americans from 46 percent by 10 percent, to 57 percent, based simply on the statistics that elected me and that we've already reviewed.

I agree with Senator Blue and the others and Senator Berger, that North Carolina is different. And I don't want to see it to return tc where I saw it in the '60s, mid to late '60s, when we were – really were concerned and had to fight a lot about racial equity. We still have a lot of racial problems, but we have progressed to where our citizens can elect, in most districts, a persor of their choice. And I don't want to see us move back to where we cannot see the quality and the goodness of people, even some of you in here, in terms of who they represent and can represent. So I would ask you to support Senator McKissick's [162] amendment.

LT. GOV. DALTON: Any further debate? Senator Mansfield, for what purpose do you arise?

SEN. MANSFIELD: To debate the amendment.

LT. GOV. DALTON; You have the floor to debate the amendment.

SEN. MANSFIELD: Thank you, Mr. President, ladies and gentlemen of the Senate.

I support this amendment as well, and I really have some questions about the methodology that Senator Rucho used because I just read all the announcements that were put forth about racial polarization, and they are based on the Presidential election of 2008. What they used almost, I would think, is almost backwards. They used – since African-Americans 90-plus percent of the time voted for an African-American Presidential candidate, therefore there must be racial polarization, when they did not go to the community or county level, particularly in Cumberland County where in my district, for the last 40 years, African-American percentage of voters have never been over 42 percent. Yet every single time there's been an African-American who has [163] represented them.

I have some problem with the Rucho map because what they've done effectively in the precincts 4, 6 and 12, which are majority white precincts, overwhelmingly majority white precincts, overwhelmingly majority conservative precincts, which I won every single one of them three to one versus my Republican opponent, they've taken all of those districts out and they replaced them with black districts.

And then the District Cross Creek 14, which is the district that I live in, which I only lost by 100 votes, which is overwhelmingly Republican, they split that district between me and Senator Meredith. And so, in a district that's only been 42.7 percent African-American in its history and has won – and has always put an African-American in this seat, you've now gone

from 42 percent to 50 percent, saying that you're helping me win a district that I won 66 to 33.

The reason why you say that you included Hoke County into my district is because you say that it is a VRA 5 – Section 5 district, which means that only an African-American represent them. And the method in this line bothers me so much is [164] because what you're saying is that the people who live right across the street from me, which is 20 feet from my house, who are no longer in my district, I don't represent – I cannot represent them. Not because I don't have good character, not because I'm not competent, but basically because of color. And I have a serious problem with that reasoning.

Because in my own private practice of medicine, over 60 percent of the people who walk in my office are not black, and yet they come in my office to get operated on and to bring their children to get operated on not because I'm black but because they believe I'm a competent physician. Yet here in this body, we're doing things and you're saying you're helping me because you're putting more people in my district who are black as if to say that I can only represent black people.

And to me, that is the most offensive thing, that I was not elected because I was competent, I was not elected because I have great character, I was elected by black people only because I was black. Which then says that those people who voted for me only voted for me just because I was black, not because they thought I was [165] actually a good representative. And what it says to the other members of my district who are not black, that they shouldn't have voted for me because obviously I cannot represent them, which I know is not true.

We are trying to move toward what people say a post-racial community. I would say we should never move towards post-racial because we should always be able to say that you are the color of the race that you are. But we should move towards a post-racist society where my son would not be given an advantage or disadvantage because of the color of his skin but he will be given an advantage or disadvantage because of the content of his character and the ability and the agility of his mind.

This map bothers me. It doesn't bother me because of the policy. I'll run against anybody anytime anywhere, and if I get voted out, I get voted out based on politics. It bothers me because at the crux of this, it allows people to do what we've done in this state for years. For black people to get on one side and white people to get on the other side and people throw incendiary bombs and we wind up doing nothing to move our state [166] forward.

I support the amendment map because, one, it takes my county from looking like a crab with a head in Hoke County to being something that is compact, and it gives me the opportunity to represent all people. I never ran as a black senator. I don't think there is a single senator who represents a majority-minority district who ever ran as a black senator. We ran as senators. I don't run to represent white people, I don't run to represent black people, I don't run to represent Democrat or Republicans, I run to represent the inhabitants and the citizens of Cumberland County, no matter who they are, where they are, no matter what ZIP code they live in no matter how much money they make.

Give me a map that does that and I'll vote for it, but this map takes us to a time where I know I don't want to be, and it raises suspicions against people in this

chamber, which I don't want to have suspicions. I urge you to support this map. Thank you.

LT. GOV. DALTON: Before I ask for further debate, let the record show that Senator Tucker is now back in the chamber and no longer in [167] need of an excused absence.

Senator McKissick, for what purpose do you arise?

SEN. MCKISSICK: Speak a second time.

LT. GOV. DALTON: You have the floor to debate the amendment a second time.

SEN. MCKISSICK: At one point, Senator Brunstetter asked about cases that might be out there. I would like to point out that there is a case by the name of Black Political Task Force versus Gavin, 300 Federal Supplement 2nd 291, decided in 2004, which was a case dealing with issues related to packing. Likewise, a case which profession Irving Joyner spoke to, and I know Senator Rucho referred to Professor Joyner as one of those persons who talked about racially polarized voting. I think an accurate characterization of his remarks was that he was opposed to the Rucho plan and said it was the equivalent of packing, and in doing so, he cited U.S. Supreme Court case, Miller versus Johnson, from back in 1995.

The other thing I'd like to point out is that we certainly have people like Senator Purcell, who down in his district, District 25, you know, he [168] has two Section 5 counties down there, but he has seen the African-American population – voting age population in his district decrease underneath the Rucho plan. And one of the things I find most troubling and disappointing is Senator Garrou's district, which is District 32, which is now shown as being a majority-minority district in terms of black voting age

population, but she basically adjoins this district and she has been taken out of the district.

Taken out and put into a situation where she is being double-bunked. And really, there is no reason why this plan could not be amended so that Senator Garrou has a right to run in that newly-crafted district if the Rucho plan moves forward, because the key thing is that you want people to vote for a candidate of choice, whether African-American or not, and I think that's absolutely imperative.

You know, I spoke of Durham a little while ago and spoke of my own race. I don't want you to think that I am an atypical example because I am not. Those biracial alliances in Durham have elected an African-American mayor. They've elected a majority of African-Americans on our City [169] Council, majority of African-Americans on our County Commissions. The person who is in care of our school board, again African-American. But they are biracial coalitions. These people may win with 75 percent of the vote, 80 percent of the vote, when you might have only about 42, 44, 45 percent African-American voting age population in Durham.

So these are the types of coalitions we want to see established and crafted. We don't want to see a return to a resegregation of districts where there is a belief that only African-Americans will vote for African-Americans, because we know today that we wouldn't have Obama elected if it hadn't been for an awful lot of white Americans who voted for him.

LT. GOV. DALTON: Further discussion and debate? Hearing none, the question before the Senate is Amendment 1. Those in favor of the amendment will vote aye; those opposed with vote no. Five seconds will be allowed for the voting. Clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: 19 having voted in the affirmative and 28 in the negative, Amendment 1 fails. Now the bill is back before us on second [170] reading.

Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: Thank you, Mr. President. Send forth an amendment.

LT. GOV. DALTON: Senator can send forth his amendment, and the clerk will read.

CLERK: Senator Nesbitt moves to amend the bill.

LT. GOV. DALTON: Senator Nesbitt is recognized to explain Amendment 2

SEN. NESBITT: Thank you, Mr. President and members of the Senate. I am going tc speak briefly about what I think have been the proceedings so far.

LT. GOV. DALTON: Excuse me, Senator Nesbitt. I did not realize that members did not have copies. Let's let the copies get out. Oh, excuse me.

SEN. NESBITT: No, we've got one.

LT. GOV. DALTON: Okay. Let's still take a moment. There is another map being given out. It's not the one you're talking about. Your amendment is out but it's disruptive to you to try to proceed while they're giving out these [171] amendments.

Also, without objection, Senator Graham has requested a leave of absence for the balance of the session today. That will be granted.

Okay, Senator Nesbitt. Let's all come back to order. I think those other maps are out now. You already had Senator Nesbitt's map but now Senator Nesbitt is recognized to explain Amendment 2.

SEN. NESBITT: Thank you, Mr. President and members of the Senate. I want to preface my map by speaking just a little bit about the process up to the moment. I've heard the NAACP, I've heard voters from all over this state, I have heard all of the minority members of this Senate, speaking with one voice about the Rucho map, and it is falling on deaf ears. For the life of me, I can't understand why that's happening.

I don't know where the advice is coming from. I'm going to read you again from Senator Watt, who is chairman of the Congressional Black Caucus, and I don't know where else I can go to tell you what the law doesn't require. And he specifically says that the Voting Rights Act was designed to counteract the effects of racially [172] polarized voting. To counteract racially polarized voting. In other words, segregated voting, and level the playing field for African-American candidates and voters.

It was not, as several court decisions have indicated, designed to create racial ghettos in which African-American candidates are given inordinate and unreasonable electoral advantages. That's exactly what we're being told that you're doing on purpose. And when you do that, it is resegregation of this state politically, period. That's why it wasn't designed to do that, and people don't want to do that. But I'm sure you won't listen any closer to me than you listened to them.

And I guess that's all up for speculation but let me go to the map that we've sent forward. If you won't listen to reason and you won't listen to what we've been giving you, perhaps you will look at cold, hard facts that you have agreed to. In the committee, we asked that when you created your Voting Rights districts, if you could do those, if you could do the Section 5 counties without busting up counties, that it

required that you did it. And the chairman – I think it was [173] Chairman Brown at the time – answered yes.

I think Rucho – Senator Rucho agreed with that. And the law clearly states that in the Stephenson case after you – it says you must first create the Voting Rights district. It says, "to the maximum extent practicable, such VRA districts shall also comply with the legal requirement of whole counties as herein established." Well, here is you a map that does that. If you'll look, Districts 4, 3, 21 and 28, which are the Section 5 districts, are all done without splitting county lines. Now, two of them are within counties but that is absolutely necessary under the one person, one vote.

Now, that's the essence of this map. It varies from Senator McKissick's maps in a few ways. Once you do that, it creates a situation where you've got to create different clusters. And the one unfortunate thing that we did not want to do, the 4th District actually goes over 50 percent. It's like 50.18 or something like that. And I want to explain that so that you will understand. That was not requested; that's Senator Jones' district at the present time. He has stated in every way that he can state that he does not want that; [174] however, that occurred when you're stuck with whole counties. He actually prefers the district that was in Senator McKissick's map, which doesn't go over 50 percent. And the only reason we did that was to show you that you can do it with whole counties. And the only problem that we had was, it upped his numbers when it was not necessary to do so. So you can take your pick. I don't know which court is going to say which thing is more important.

Number of pages in the Rucho bill, 106. This one is eight. Hold them up and look at them if you want to

see how easy it is to draw these districts when you aren't trying to skiddle-skaddle all over the state and pluck out voters everywhere you can find them because of race, to put them in a particular district.

Number of split counties, which is in violation of Stephenson. They say you've got to split as few as possible. Rucho splits 19; this one splits 14.

Number of split precincts, 257 in Rucho; six in this plan. Six. That's all you've got to split to get everything to work on the numbers. The rest of it was done in the Rucho plan to move [175] black and white voters around.

Number of county clusters, 25 in the Rucho plan, 28 in this plan, and the higher number is better. That means the districts – the clusters are smaller; therefore, there's more of them. Number of one-county clusters, which is also required by our Supreme Court, that's where you start. You start with whole-district clusters, so one-district county clusters. I may have said that backwards. There are only 13 in the Rucho plan; there are 17 of those in this plan.

And I'll just give you a little figure. I don't know how you figure out who is going to win whatever. You say you want to make them competitive, and you picked Roy Cooper's race, where he won everywhere, to tell us we're going to win. We've looked at the number of districts won by McCain and the number of districts won by Obama, actually – the number of districts won by Bush in '04 and then Obama in 2008. Now, that means the district switched. One Republican presidential one year, Democrat the next year. In the Rucho plan, there is only one, Senate District 19. In this plan, there are four. That means it's a more competitive plan.

[176] The number of districts won by Kerry or Bush in '04 with a margin of plus or minus five percent, which means the vote was close. There's only two in the Rucho plan; there's five in this plan.

Compactness, which is another requirement, is way down the list, but they say they want them compact. Ours is 9,056 miles. Once again, Rucho's is 11,183. You can go to Flagstaff, Arizona, with those extra miles.

The double-bunking, in the Rucho plan, there were two Republicans bunked with Republicans. In this plan, there are three, but they occurred from whole-county clusters. That's just what happens. They're Clary and Daniel, Soucek and Allen, Brock and Bingham.

The Democrat-Democrat double-bunks are Atwater and Kinnaird. Neither one of them likes that. The D and the R double-bunks are Jenkins and Newton. I haven't asked them if they like that; that would be interesting, though, wouldn't it?

We can go on into the night here, saying the same things over and over. I don't know what you're going to listen to. But here is a statistical map that shows you you're in violation [177] of virtually every decision and everything the court has directed you to do in North Carolina. We think you're in violation of the Voting Rights Act by doing what you did, because you are clearly racially segregating the state politically, period. And it's for no other purpose. It's not because it needed to be done.

We have Senator Dannelly. We have Senator Blue. We have other members here, Senator McKissick, Senator Graham, who come from districts that aren't 50 percent, that aren't Section 5, and they're doing just fine, and their population's doing just fine, and you have gone in and messed with every single one of

them, as if their voters didn't elect the person of their choice. Well, of course they did.

And then, on that issue, you – you stated it – I cannot believe you stated it again today. You removed Senator Garrou because she's white. That's racism, folks. That's what that is. You can't do that. You can't discriminate against her because she's white a bit more than you can discriminate against Dan Blue because he's black. The law doesn't allow you to discriminate based on race, and you've stated clearly that's what you're [178] doing. And just in case you didn't notice, she is the person of their choice. She's won four elections up there? Five elections in that district. How many has she got to win before we agree, she's the one they want? But you took her away from them. That doesn't fix anything.

I put this plan in front of you. I'm going to quit there, and we'll engage further if that's what you choose. We've tried to show you in every way possible that you're going down the wrong road here, and we've given you avenues where you can get back up if you want to try. And you all are in charge of this process. If you want to stop and take more time, have at it. I mean, we were supposed to quit in June; it's already the end of July, and I hadn't quit yet. Maybe you all got to quit during this interim; I didn't, and probably not going to get to quit in the next one, so we'll just keep going until we get this right. You don't have to jump and knee-jerk to these good plans.

LT. GOV. DALTON: Members, before I call for the debate, let me recognize Dr., Linda O'Boyle. She is our nurse of the day, and we thank you for being here, and thank you for your service.

Okay, members, the floor is now open for [179] debate on Amendment 2. Senator Clodfelter, for what purpose do you arise?

SEN. CLODFELTER: To speak on the amendment.

LT. GOV. DALTON: You have the floor.

SEN. CLODFELTER: Thank you, Mr. President, members of the Senate. The hour is late, and you've heard an awful lot. And especially because I'm a lawyer, I know you don't want to hear an awful lot from me, so I'm going to try to be brief. There are some things I do want to put in the record, and this amendment is a good occasion to do that.

I could have – I will say also, I have spoken to the same points on Senator McKissick's amendment, because the matters I will address are identical between the two amendments.

I've had handed out to you another map. It's called Clodfelter Mecklenburg, and I want you to get it side-by-side with Rucho Senate 2. It's an enlargement of the Mecklenburg portion of Senator Nesbitt's Amendment 2. It's the same as Senator Nesbitt's Amendment 2; it's just blown up so you can see it a little bit better.

And the comments I really want to address [180] are to illustrate some of the differences in this one piece of the state that demonstrate how far out of line Rucho Senate Plan Number 2 is with the redistricting requirements of the North Carolina Supreme Court as expressed in the two Stephenson v. Bartlett decisions, Stephenson 1 and Stephenson 2.

Mecklenburg County is a standalone county under Stephenson. It has enough population to where it doesn't have to be clustered with any other county in order to draw districts. And it's not subject to Section 5 of the Voting Rights Act, so I won't have to talk about preclearance or the Section 5 requirements, because they don't apply.

I know Senator Rucho and I will disagree, and I think the afternoon has demonstrated the disagreement in this chamber, over what Section 2 of the Voting Rights Act does or does not require. I'll just say a few brief things about that, and then I'll come on to the major points.

The notion that Section 2 of the Voting Rights Act would require the creation of majority-minority districts in Mecklenburg County hangs entirely on the finding some 30 years ago in Gingles v. Thornburg. That case was decided 25 years ago. It was based on the 1981 redistricting.

[181] It was based on a set of facts from 30 years back in which there had been racial gerrymandering of Senate District 22 in Mecklenburg County. And upon that premise, and that premise alone, hangs the assumption in Rucho 2 that Section 2 of the Voting Rights Act requires the creation of majority-minority districts in Mecklenburg County. A lot, as you've heard other speakers say, has changed in the last 30 years.

In Charlotte, not the least of those changes have been that we've elected on two different occasions two different African-American mayors of the city of Charlotte, a city that has an African-American population of less than 30 percent, over that time period. We've been able to elect with very substantial crossover white voting, and in one case a majority of the white community voting for the African-American candidate who was elected.

I could talk about other examples, and that would take us well into the evening, and I won't do that. But I'm sorry Senator Graham had to leave us earlier, because he's probably one of the best case studies of all. When the district he currently represents was created, it was a new [184] district after the last Census, and Mecklenburg County was given a fourth

Senate seat. He ran in an open seat; there was no incumbent, and he ran against a very powerful former legislator, many of you will remember him, Fountain Odom, who had been on the board of County Commissioners, chairman of the County Commissioners, and had served in this chamber for many, many years. And they slugged it out in a Democratic primary in a district that was less than 34 percent African-American. Malcolm Graham won that election with 63 percent of the vote.

It's very hard to make a case of polarized racial voting in a county that exhibits those kinds of election contests. And as I say, I could go further into the evening, and I won't do that. I'll just leave it that Senator Rucho and I, I know, are going to disagree on how Section 2 of the Voting Rights Act does or does not operate in Mecklenburg County, but what I want to talk to you about now is really the contrast between the map offered by Senator Nesbitt on what the Stephenson court, our Supreme Court, called traditional redistricting principles, and talk about the contrast between what you see in those two maps. I [183] wish I had a blow-up of Rucho 2; I'm sorry I don't. I should have. It's going to be a little hard to follow some of it.

Let me say that the blow-up that you have of Mecklenburg County that is embodied in Senator Nesbitt's Amendment Number 2 actually is a slight variation on a plan that was discussed and presented at one of the public hearings, so this is not the first time it's been out. It was discussed by one of the citizens who made a presentation last Monday night at the public hearing in Charlotte in reaction to the release of Rucho Senate 2. It has been modified somewhat, frankly, to better conform to what we think are the legal requirements.

Stephenson 1 and Stephenson 2 both said that when you have a county like Mecklenburg that has a population sufficient to support more than one Senate district, it's larger than a single Senate district, that in drawing the interior lines in that county, it says the Senate districts shall be compact and represent communities of interest. It says it in Stephenson 1, the same language as it used in Stephenson 2, the second decision of the Supreme Court. And that's where I want you to compare and contrast the two maps.

[184] It's hard to see on Rucho 2, but there's a new district that's been created; it's district number 41. It's in the northern part of the County. That's where our population growth has been; it's really been explosive in that part of the county. And that district on Rucho 2 takes in the northern part of Mecklenburg County, the dark blue area. Very hard for you to see. But if you could trace along the Cabarrus County line there, one Census block at a time, it snakes down like a tapeworm all the way down to the Union County line where it bulges out again and runs almost, but not quite, down to the South Carolina border. It runs all the way from Jetton Park and the Peninsula Club up on Lake Norman, almost down to the South Carolina border, and it gets there with a small chain of Census tracts, right along the Cabarrus County line.

If you'll look at the blow-up, if you look at the blow-up, you'll see along the Cabarrus County line in that pink area, that pink district, a series of small links that connect 41 on the Rucho map down to Matthews and Mint Hill. That is not, ladies and gentlemen, compact, by any definition of the phrase "compact."

[185] By contrast, if you'll look at the blowup, which shows you what's in Nesbitt's Amendment Number 2, there is a new Senate District for northern Mecklenburg County, where the growth is. It's also

Number 41. And look at the difference in the shape of those two districts.

Senate District 41 in the blow-up map contains the towns of Davidson, Cornelius, and Huntersville, the lake communities along Lake Norman and Mountain Island Lake, all of which exhibit a very strong community of interest in local affairs. They are united; they are not divided or separated.

Take a look next at the – I'll start with the blow-up, because again, it's just easier to read – when you're working at the precinct level there, it's a little easier to look at the blow-up. Look at the green, dark green district in the middle there. That's District 37. That's the district, actually, I currently represent. And that district, as you can see on the blow-up, that's Senator Nesbitt's amendment, is indeed a very compact district. It embraces the core center of the city of Charlotte. That's central Charlotte right there, and that's about as compact as it's [186] possible to draw it. It includes the Center City neighborhoods and the neighborhoods that were largely built just after World War II. A very strong community of interest, one so strong that the city of Charlotte, for planning purposes, recognizes that area and calls it a distinct planning region of its own.

If you'll look on the contrast in Senate – at Rucho Senate District 2, or Senate Plan 2, look at the dark 37 there. Take a look at that district. It starts out, gamely enough, over on the east side, in a lot of the ethnic areas that have been settled by Vietnamese and Laotian and Hispanic immigrants to the city along Central Avenue. But then, it cuts right down South Boulevard to the middle of town and balloons out over by Lake Wylie and the Buster Boyd Bridge, the resort communities down on the lake, which have virtually nothing in common with each other.

It's hard to see it on the Rucho map again, but there's a little finger of that pink district, District Number 40, that sort of juts right up and almost bisects 37 and 2. Go back to the blow-up, and I'll tell you what's going on there.

[187] If you look at the blow-up map, the number 37 that's on that district, right above that, there's a precinct number 17. It's right smack-dab in the middle of the district. By the way, it's in the middle of the current Senate district, too. It's right smack-dab in the middle of the current district.

And in the Rucho plan, although it's hard for you to see, there is a little line that snakes from District 40 along Sharon Amity Road, and then it comes up Craig Avenue, and it balloons out and takes most, but not all, of that Precinct 17 and puts it over in District 40, a balloon on a string. A balloon on a string, why is that done?

Well, there's 2300 African-American voters in Precinct 17. They're completely surrounded by predominantly white neighborhoods. Historically have been, for over 100 years. Now, not all of Precinct 17, though, in the Rucho map goes with Senate District 40. There's 250 white people in that precinct. They're left in Senate District 37. The African-Americans balloon on a string over to 40; 250 white people left in District 37. It defies the Stephenson principles of compactness, contiguity, and community of [188] interest.

That neighborhood, the Grier Heights neighborhood, has been an integral part of that center portion of Charlotte in every district that has been drawn, House, Senate, City Council, County Commission, school board, since the beginning of the districting process.

I could go on. The communities of interest represented by Senator Dannelly's district are the historic west side neighborhoods anchored around Johnson C. Smith University and down the west side, in the city of Pineville. The district that's yellow on the blow-up map there represents the towns of Mint Hill and Matthews, which have a great commonality of interest, and the southern part of the city of Charlotte, linked together as they are currently in the current districts. That map respects the history of those communities, their common interests and common allegiances, and the principles enunciated by the Supreme Court in Stephenson 1 and Stephenson 2. In every respect, those principles are violated by Rucho Senate Number 2, and for that reason, I intend to support Senator Nesbitt's amendment.

LT. GOV. DALTON: Further discussion and [189] debate on Amendment 2? Senator Rucho, for what purpose do you arise?

SEN. RUCHO: To debate the amendment.

LT. GOV. DALTON: You have the floor.

SEN. RUCHO: Thank you, Senator Clodfelter, for your brevity. It was appreciated. I will tell you that we did have a chance to look at this map earlier in the day, and we believe that the Senate Fair and Legal Nesbitt plan does not comply with the federal and state laws, and we should vote against it for that reason, and I urge you to vote against Amendment 2.

LT. GOV. DALTON: Further discussion and debate? Senator Dannelly, for what purpose do you arise?

SEN. DANNELLY: To discuss the amendment.

LT. GOV. DALTON: You have the floor to debate the amendment.

SEN. DANNELLY: Thank you, Mr. Chair -Mr. President. There's an old saying that says, when it ain't broke, don't fix it. Of course, the last Census indicated that we have to do some fixing. And then, when we do fixing, we ought to take the simplest and fairest way to fix what needs fixing.

[190] There are seven African-Americans in this body, except for one, who was in a three-way race in the last election but still won by 45 percent, and all of our districts presently, are under 50 percent. The rest of us won from 65 to 70-some-odd percent, by that margin. To me, that does not need fixing.

And then, I heard several times, and I call that trying to pacify African-Americans. I heard several times someone saying, if the present incumbent don't work in the one of the districts as they're presently constituted, then when they don't run, the probability will be that another African-American will not be elected in that district. That's not so. That is definitely not so.

So what they are trying to do is, we must bump it above 50 percent on these districts so that we can hopefully ensure that when incumbents don't run, another African-American will be elected. That, too, is not so.

African-Americans are not monolithic in their thinking, and in their desires as to who they want to represent them politically. And what African-Americans are doing today is voting for candidates of their choice, and yes, their choices, [191] some of them, were white. But they didn't vote for them because they were white. They voted for them because of the manner in which they represented their concerns, and that's what we all should be doing.

I really feel somewhat insulted by the Rucho map. In my opinion, it rudely dilutes the political influence of African-Americans across this state. Our influence should not be just in a majority, almost majority, African-American district. Our influence should influence other districts who are running candidates that are directly opposite to what we feel ought to be representing us. That's what influence is. But no, you want to segregate African-Americans, pack us in a district, therefore, our influence is limited primarily to that district.

You wouldn't like it, the majority race, and we don't like it. I urge you to support the Nesbitt amendment.

LT. GOV. DALTON: Any other questions or debate? Hearing none, the question before the Senate is the passage of Amendment 2. Those in favor of the amendment will vote aye; those opposed will vote no. Five seconds will be allowed for the [192] voting; the clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: Brock, no, Clary, no, Preston, no. 18 having voted in the affirmative and 28 in the negative, Amendment 2 has failed, and now the amendment – the bill is back before us on its second reading. Senator Purcell, for what purpose do you arise?

SEN. PURCELL: Mr. President, I'd like to speak on the bill and then ask a question.

LT. GOV. DALTON: The Senator has the floor.

SEN. PURCELL: I want to speak basically about Senate District 25, and to point out to you that Anson County has a 47.5 percent African-American voter age population. Richmond County has 29.7 percent.

Scotland County has 37.2 percent. Stanly County has 10.7 percent African-American voter age population.

The district – the portion of Rowan County that was added to the district has only 2.6 percent African-American voter age population. What you have done with the Rucho Senate 2 bill is to reduce the voting strength of African-Americans in Senate District 5 by 6 percent. Two of the [193] counties in the 25th District come under Section 5 of the Voting Rights Act: Scotland and Anson Counties.

A portion of adjacent counties, Hoke County, for example, has a 35.85 percent voter age African-American population. Montgomery County, which is also an adjacent county, has 18.9 percent African-American voting age population. Both of these are real similar to the – to the four counties, the majority of the counties in District 25.

I'd like, now, Mr. President, to ask Senator Rucho a question.

LT. GOV. DALTON: Senator Rucho, do you yield?

SEN. RUCHO: Sorry, Mr. President. Yes, sir, yield to a question.

LT. GOV. DALTON: He yields.

SEN. PURCELL: Senator Rucho, I've heard you refer today over and over to the Voting Rights Act, and I've also heard you say that we must not retrogress the voting positions of African-Americans.

My question is this: did you consider when you decided to bring an area of Rowan County, [194] population larger than Anson County, with only 2.6 percent African-American voting age population, even though there were only – even though there were two other contiguous counties with African-American voting age population similar to – to the four of the five

counties in your district, did you consider that you were – what you were doing by adding a portion of Rowan County, that this would reduce the voting strength of African-American voters in the 25th District by 6 percent? And if you didn't consider that, why didn't you consider it?

SEN. RUCHO: Senator Purcell, your statement – the premise to your statement is something I don't agree with. And just to remind you, these following the Stephenson decision as far as the county pods and county groupings and the like, and that is how that was determined as to the four whole counties and the additional portion to make sure that we – we met the plus or minus 5 percent ideal total – ideal population in the district.

SEN. PURCELL: Follow-up question, Mr. President?

LT. GOV. DALTON: Follow-up.

[195] SEN. PURCELL: Well, just to answer my question, did you consider that you were reducing the voting strength of minorities in District 25 when you did this?

SEN. RUCHO: Senator Purcell, I'm not sure how I can explain any differently. Our statements that we have published, plus the discussion in the – on the committee clearly delineates how we arrived at trying to draw these districts in, you know, on the Rucho Senate 2 map.

LT. GOV. DALTON: Any further discussion and debate? Senator Kinnaird, for what purpose do you arise?

SEN. KINNAIRD: To debate the bill.

LT. GOV. DALTON: You have the floor to debate the bill.

SEN. KINNAIRD: Thank you. We've talked a great deal about race and African-Americans, but I want to talk about a different population group right now. I want to talk about what this bill does to the number of women representing the state of North Carolina, and when you combine it with what the House has done, I think you're going to see that we are an endangered species. That may sound a little flip, but I'm serious. I'm very [196] serious of what this does to the representation of women in the state of North Carolina in the General Assembly.

Under the map – first of all, I want to remind you that we are 54 percent of the registered voters in this state, and I think population-wise, we're 51 percent. So, believe me, we take voting very seriously as women.

Three women in the Rucho map are double-bunked. When I came here in 1997, there were seven women in the Senate. Today, there are six women in the Senate. We are going backwards.

Now, I want to give you a history. Senator Blue gave us a wonderful history of African-American. Mine will be shorter, but no less dramatic. In 1970, I was up in that balcony. Maybe Senator Allran was here when the Equal Rights Amendment was defeated in North Carolina, defeated it in the state of North Carolina, one vote.

In 1982, there were 32 women in the – 22 women in the General Assembly. And I won't break this down by Democrats and Republican, because I'm talking about women representing other women. In 1995, 28 women in the General Assembly. And as I said, in '97, when I came, there were seven.

[197] We now have in 2011, 38 women between the House and the Senate. And what is happening,

especially when you combine it with what is happening in the House, where they're double-bunking eight women, we are really going backwards.

Now, you worked hard on the racial issue. You didn't listen to the African-Americans who were already elected, but that's all right. You listened in the context of what this map means. But what it means to women is devastating. 54 percent of the registered voters are women, and yet you choose to turn your back.

There were women who testified in the hearing here in Wake County. Three of them were from my county. Two of them were African-American women, and they talked about this great divide that is taking place.

Now, Senator Blue talked about how we want to be on the right side of history. Now, what are we going to look at when we look back 20, 30 years from now? You know, we love to bring up these wonderful heroes like McNeill Smith, that we honored right here. He was on the right side. How many people were not on the right side? Do we want to be on the right side of saying that women are [198] not competent to be here? That women can't represent things?

And I want to tell you, women do look at things differently. They look very often at women and children. And there was a wonderful political cartoon, which I didn't put out, because it probably is a little too in-your-face, but it talks about how we cut teachers in the budget, we cut social workers, nurses, child care providers. Those are all women's jobs.

Women speak for women. Women speak for children. They speak for all the state. But 51 percent of the people ought to have some representation where those issues that mean a lot to women and to their children are represented here. And I am sorry that we are going backwards fairly rapidly, when you look at

the map here, especially in conjunction with the House map. I urge you to vote against this bill. Thank you very much.

LT. GOV. DALTON: Further debate? Senator Blue, for what purpose do you arise?

SEN. BLUE: To send forth an amendment.

LT. GOV. DALTON: The Senator can send forth his amendment. The clerk will read.

[199] CLERK: Senator Blue moves to amend the bill.

LT. GOV. DALTON: Senator Blue is recognized to explain Amendment 3.

SEN. BLUE: Thank you, Mr. President. Ladies and gentlemen, this is a simple amendment, because I think the debate here this afternoon shows us several things. Number one, that my Republican heroes like Abe Lincoln or Everett Dirksen or others who understood what it takes to make a nation strong and to save a nation apparently have lost their proper places in the party that holds the majority in this chamber now.

And we have pointed out to you in every way that I know how the flaws in this map. Now, I know that you hired some good lawyers in Washington or New York or wherever you may get – Raleigh, too, I guess. But you know, good lawyers exist on both sides of issues, and many people study these things, and we tried to point out to you that the Voting Rights Act does something very simple.

Section 2 of it says that no voting qualification or prerequisite to voting or standard practice or procedure shall be imposed or applied by any state or political division in a manner [200] which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color. That's

been amended after a federal court decision to say that, you know, it doesn't take the intent to discriminate to determine that there's a violation; it's the effect. And all these maps that we have looked at, we have told you that you create voting nightmares in precincts that are predominantly black, we have shown to you, while you say that you didn't look at race in deciding some of these districts, that you split up precincts in such a way that they only could have been split by your looking at race, because you can't tell within a precinct who voted for whom.

We've shown you that you violate Stephenson by reducing by more than 25 percent, 30 percent the number of county cuts that you've got to make. We've shown you that – a series of ways in which you could improve these maps. You've had the opportunity; you don't have the desire.

So whatever the result is, it shows that this process of redistricting is something that's a little bit bigger than we can deal with, that the technology has enabled us to put our own passions [201] for power above an effort to be fair, an effort to be inclusive, and an effort not to resegregate the state.

So this amendment is a simple way by saying that when this map comes back to you, whether it's from the Justice Department, from a federal court in the District of Columbia that may look to preclear it, whether it's from a three-judge panel that reviews it for Section 2 and 14th Amendment violations, or whether it's from a state three-judge panel that reviews it after the lawsuits are filed on the Stephenson criteria on splitting these counties all over the place, on disregarding what the federal Voting Rights law is, and by creating these nightmares in precincts across North Carolina, primarily in black precincts, come Election Day, that we now will give it

to somebody who's got the wisdom and a vision for the whole state and can do it the right way.

This says when this map comes back, whether it's in two months or it's in six or eight months, that the people who will redraw the lines will be a special staff committee appointed by the leadership of this chamber. You get a person each on staff. All of us trust our staffs, I believe.

[202] And even if you don't, between the leaders in this chamber, you'll appoint a staff person who will come up with a map that adheres to what the law is, and will bring that map back to us to vote on, but they will be the ones who will get the first pass at it. Again, because many of you have decided that non-North Carolina values held by non-North Carolinians is a better way to do it.

I submit to you that this is a logical way to do it. It's a way that many of you have told people you agree to doing. It's not a separate commission, but it's a separate way of doing it so that we can get this personal political advantage that you're trying so hard to gain out of the equation. I move the adoption of the amendment.

SEN. APODACA: Mr. President?

LT. GOV. DALTON: Senator Apodaca, for what purpose do you arise?

SEN. APODACA: Motion, please.

LT. GOV. DALTON: You have the floor.

SEN. APODACA: Mr. President, I move that Amendment 3 to lay upon the table.

LT. GOV. DALTON: Senator Brunstetter, for what purpose do you arise?

[203] SEN. BRUNSTETTER: To second the motion.

LT. GOV. DALTON: We have a motion and second that Amendment 3 lie upon the table. That is a non-debatable motion. Those in favor of the motion to table Amendment 3 and that it lie upon the table will vote aye; those opposed to the motion will vote no. Five seconds will be allowed for the voting; the clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: Senator Rouzer has an excused absence; that's what she was telling me. 27 having voted in the affirmative and 18 in the negative to Amendment 3, the motion has passed, and Amendment 3 will lie upon the table.

Further discussion and debate on the committee substitute to Senate Bill 455? Hearing none – excuse me, Senator Berger of Rockingham, for what purpose do you arise?

SEN. P. BERGER: Mr. President, to speak briefly to the bill.

LT. GOV. DALTON: The Senator has the floor.

SEN. P. BERGER: Thank you, Mr. President and members of the Senate. I think one thing is clear from the debate today, is that everyone in [204] here likely has an opinion about what it means to create a majority-minority district. I think the thing that in some respects is lost in the debate is that the law is not what we would like for it to be; the law is what the Supreme Court says it is. And the Supreme Court of North Carolina and the Supreme Court of the United States have basically said that a majority-minority district means 50 percent plus one.

Now, this body has actually endorsed that idea when the body voted to pass House Bill 450, and in House Bill 450, there were votes taken. I think all but two

members of this body endorsed the prospect or the idea that a majority-minority district means 50 percent plus one in creating the Guilford County Commissioner districts.

So I would urge you to put aside your personal opinion about what the law ought to be, and vote for Senate Bill 455 and pass this on today. Thank you.

LT. GOV. DALTON: Further discussion and debate? Hearing none, the question before the Senate is the passage of the committee substitute to Senate Bill 455 on its second reading. Those in favor will vote aye; those opposed will vote no. [205] Five seconds will be allowed for the voting; the clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: 27 having voted in the affirmative and 18 in the negative, the committee substitute to Senate Bill 455 has passed its second reading, and without objection will be read a third time.

CLERK: North Carolina General Assembly enacts.

LT. GOV. DALTON: Any further debate? Hearing none, the question before the Senate is the passage of the committee substitute to Senate Bill 455 on its third reading. Those in favor will vote aye; those opposed will vote no. Five seconds will be allowed for voting; the clerk will record the vote.

(Electronic vote.)

LT. GOV. DALTON: 27 having voted in the affirmative and 18 in the negative, the committee substitute to Senate Bill 455 has passed its third reading, and the House will be so notified. Let me also do some housekeeping, too. Messages from the House, the clerk will read.

CLERK: "Mr. President, it is ordered [206] that the message be sent to your honorable body with information that the House of Representatives passed Senate Bill 33, ratified edition, An Act to Reform the Laws Relating to Money Judgment of Appeal Bonds, Bifurcation of Trials in Civil Cases and Medical Liability, notwithstanding the objections of the Governor, and the bill becomes law. Respectfully, Denise Weeks, Principal Clerk."

LT. GOV. DALTON: Notices and announcements? Senator Apodaca, for what purpose do you arise?

SEN. APODACA: Mr. President, I need to make a quick motion, please.

LT. GOV. DALTON: Senator, make your motion.

SEN. APODACA: Thank you, Mr. President. Members, House Bill 32 is currently – excuse me, House Bill 32, Electoral Freedom Act of 2011, currently in the Judiciary I Committee, ask that it be removed and re-referred to the Committee on Rules.

LT. GOV. DALTON: Without objection, so ordered. Senator Nesbitt, for what purpose do you arise?

SEN. NESBITT: To make an announcement. [207] I'm sorry, point of personal privilege at the proper time.

LT. GOV. DALTON: Let me come back to you on that. Let me get the announcements out of the way. Senator Rucho, for what purpose do you arise?

SEN. RUCHO: To make an announcement, Mr. President.

LT. GOV. DALTON: You have the floor to make an announcement.

SEN. RUCHO: Mr. President and members of the Senate, I have an announcement pertaining to

committee appointments on Friday, July 22nd, 2011. The President Pro Tem acted under Rule 31 to appoint Senator Debbie Clary to the Senate Redistricting Committee in place of Senator Bill Rabon.

LT. GOV. DALTON: Any other announcements to be made? Senator Apodaca?

SEN. APODACA: Announcement, please.

LT. GOV. DALTON: You have the floor.

SEN. APODACA: Members, tomorrow at 12:30, there will be a Rules Committee meeting held in our usual room downstairs. We will be considering House Bill 32, Electoral Freedom Act of 2011.

[208] LT. GOV. DALTON: Any other announcements? Hearing none, points of personal privilege, Senator Nesbitt has the floor.

SEN. NESBITT: Thank you, Mr. President. And I just – I've spent a lot of time around here, and I know we just finished doing something that's extremely complex, something that there's no roadmap for. We lose all the institutional history every ten years, and we ask staff to turn these maps around and all these complex documents, and I think they did as good a job as I've ever seen done around here, and we need to commend them. They've done it with a smile, and it looked easy, but I can assure you it wasn't, and we need to thank them for that. (Applause.)

LT. GOV. DALTON: Any other business to be brought before the Senate? Hearing none, Senator Berger of Rockingham is recognized for a motion.

SEN. P. BERGER: Thank you, Mr. President. I move that the Senate adjourn, subject to the receipt of messages from the House, to reconvene on Tuesday, July 26, 2011, at 1 p.m.

LT. GOV. DALTON: Seconded by Senator Gunn. All those in favor say aye?

[209] (Voice vote.)

LT. GOV. DALTON: Opposed, no? The ayes have it. The Senate stands adjourned.

(Pause.)

CLERK: Messages from the House.

"Committee substitute for House Bill 937, An Act to Realign North Carolina House of Representatives Districts Following the Return of the 2010 Federal Decennial Census, referred to calendar, July 26."

(Pause.)

CLERK: Correction on House Bill 937. It is An Act to Realign North Carolina House of Representatives Districts Following the Return of the 2010 Federal Decennial Census. It is sent to the Committee on Redistricting.

(THE SESSION WAS ADJOURNED AT 6:57 P.M.)

[210] STATE OF NORTH CAROLINA COUNTY OF WAKE

CERTIFICATE

I, Robbie W. Worley, a court reporter and Notary Public, do hereby affirm that the foregoing pages contain a verbatim transcription of the above-captioned proceedings and have been transcribed to the best of my ability and understanding; I further affirm that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action.

IN WITNESS WHEREOF, I have hereto set my hand, this the 31st day of July, 2011.

Robbie W. Worley

[1] NORTH CAROLINA GENERAL ASSEMBLY
HOUSE COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Wednesday, July 27, 2011, 10:06 a.m.
Reported by Karen Kidwell

Worley Reporting
P.O. Box 91447
Raleigh, NC 27675
919-870-8070

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[2] Committee Members Present:

Representative Dollar	Representative Lewis
Representative Dockham	Representative Stam
Representative Jackson	Representative Howard
Representative Hackney	Representative Gill
Representative Floyd	Representative Fisher
Representative Farmer-Butterfield	
Representative Faircloth	Representative McComas
Representative West	Representative Samuelson
Representative Burr	Representative Bell
Representative K. Alexander	Representative Boles
Representative Brown	Representative Bryant
Representative Cook	Representative Crawford
Representative Daughtry	Representative Rapp
Representative Randleman	Representative Pierce
Representative Parmon	Representative Moffitt

Representative Mobley	Representative McGee
Representative Lucas	Representative Langdon
Representative Jones	Representative Ingle
Representative Wilkins	Representative Stevens
Representative Spear	Representative Sanderson
Representative Rhyne	Representative Moore

[3] Committee Staff Present:

Pattie Fleming, Committee Clerk

Shawn Parker, Staff Attorney

Walker Reagan	Dan Frey
Erika Churchill	Susan Sitze
Brad Krehely	Kelly Quick
Denise Adkins	Karen McGraw

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[4] REP. DOLLAR: The meeting will come to order. The members will take their seats. If the members would take their seats at this time, and we can move forward. If any extraneous conversations can be taken outside. We'll move forward with getting our meeting under way.

We're pleased to have with us a number of pages. Emily Shea from Mercer, New Jersey, sponsored by Speaker Tillis. Eric Van Wingerden, Mecklenburg County, sponsored by Speaker Tillis. And assuming these pages are here, please stand and wave so the members can see you. Jennifer Brown, Wake County, sponsored by Representative Stara. Wesley Sites, Catawba County, sponsored by Representative Setzer. And I apologize. I'm going to pronounce this name

incorrectly. But Carla Restina from Guilford County, sponsored by Representative Blust. Jonathan Nguyen, Mecklenburg County, sponsored by Representative Killian. Stephen Prys, Mecklenburg County, sponsored by Speaker Tillis. Caroline Price, Sampson County, sponsored by Representative Bell. Anna Osborne, Alamance County, sponsored by Representative Ingle. And Kevin Gray of Wake County, sponsored by the Chair.

Glad to have all of you pages with us [5] today and appreciate your help as we do the work of the committee today.

Our sergeant, Sergeants at Arms, as usual, Reggie Sills, John Brandon, Martha Parrish, Wayne Davis, Champ Claris and Larry Elliott.

The first order of business today for the committee will be the presentation of the North Carolina State Senate, Senate Redistricting Plan.

It would be presented by Chairman Lewis, and that number is–what's the number? Senate Bill 455. And there is no PCS, correct?

Chairman Lewis is recognized.

REP. LEWIS: Good morning, ladies and gentlemen of the committee. Thank you for your time and attendance today. I have been asked to stand before you to present Senate Bill 455, which is the redistricting plan for the North Carolina Senate. I apologize. We seem to have a little bit of an echo. I don't know if this is me or the microphone. I apologize to members for that.

Senate Bill 455, which you have before you, was developed using the same criteria that I have shared in this committee before and the development of the

House plans. And in the interest of not feeling a need to place the exact same shape [6] back upon the record and also to maximize the committee's time effectively, I will just say that the plan that you have before us has passed the

Senate. There are no changes in it from the way that it arrived to us from the Senate.

I believe that it does create 50 Senate districts in compliance with all applicable state and federal laws. And I'll be happy to yield to any – any inquiries that you have, and at the appropriate time, Mr. Chairman, I would like to offer a motion.

REP. DOLLAR: Thank you. Thank you,

Chairman Lewis. Are there any questions from the committee? Representative Hackney.

REP. HACKNEY: Thank you, Mr. Chairman, and questions for Representative Lewis, if I may. I understand that this particular bill splits 19 counties, as opposed to 14 in the Nesbitt plan. Is that correct?

REP. LEWIS: Representative Hackney, I did not–I did not personally review the Nesbitt plan, and I apologize that I can't–I can't speak to that.

REP. HACKNEY: And can I ask staff then to verify the number of split counties in the two plans?

REP. DOLLAR: If staff will respond to [7] that. If you would give the staff a moment to pull that number together. You can move on to another question, and we'll get that information for you.

REP. HACKNEY: All right. And I believe that the Senate plan splits 257 precincts, and the Nesbitt plan splits 6. Is that correct?

REP. DOLLAR: Staff have that number? The staff will get that number and get it back to you. If you would ask another question.

REP. HACKNEY: And can we put that in the record when staff gets the response?

REP. DOLLAR: We will place it in the record.

REP. HACKNEY: And I believe you have in this plan 25 county clusters, and the Nesbitt plan has 28. Is that correct?

REP. DOLLAR: We'll be happy to make sure that those statistics are placed in the record.

REP. LEWIS: If I could interrupt just a moment, Mr. Chairman, and Representative Hackney. The reason that we are slower in answering your inquiries this morning, Shawn Parker, who has been the staff member who has been tasked with managing this stuff, was blessed last night, I think, with the birth of his son, and that is the reason he is not [8] here.

So the staff that we have is, will get that, and it will be–all of your inquiries of this nature will be addressed. But that's why we don't have the responses right now.

REP. HACKNEY: That is indeed reason for celebration and for absence.

And can you tell me–can anyone on staff tell me the relative increases or decreases in African-American voting age population in the Voting Rights districts?

REP. LEWIS: Representative Hackney, I believe that all of that is found in what we refer to as a stat pack report. I can tell you that the 9 Voting Rights Act districts that are found on this map were drawn in compliance with federal and state law.

REP. DOLLAR: Further question? Further questions from other committee members?

Representative Hackney, you have a further question?

REP. HACKNEY: Yes. To what extent was the public input from the African-American community to the effect that they did not want African-American percentage increases in their Voting Rights districts, but simply to avoid retrogression as [9] provided in the Voting Rights Act? To what extent was that input taken into account in this plan?

REP. LEWIS: Mr. Chairman, Representative Hackney, thank you for that question. The input from all members of the public is very important and was reviewed and considered by the chairs.

It is my firm belief and stance that the plan that you have before you complies with all federal and state mandates and was, as you know, when we drew these plans, we complied with what we saw as the hierarchy of instructions and mandates from drawn plans which, of course, are as outlined before the one person, one vote standard, the Voting Rights Act and then the Stephenson criteria and then the lesser factors that are found and have been outlined before in both our statements and also in the legislator's redistricting guide.

REP. DOLLAR: Let me follow up the question to Chairman Lewis. Chairman Lewis, do you recall at any time that we received any substantial testimony in the public hearings to the effect that the African-American community would want fewer African-American members of the State Senate or the General Assembly as a whole?

REP. LEWIS: No, sir, I do not.

[10] REP. DOLLAR: Thank you.

SPEAKER TILLIS: Representative Hackney, any further questions? Or Representative

Butterfield, Farmer-Butterfield.

REP. FARMER-BUTTERFIELD: Thank you,

Mr. Chair. I want to ask if any of the testimony at the public hearings around communities of interest in the voting rights district was taken into serious consideration?

REP. LEWIS: Representative

Farmer-Butterfield, thank you for that question. The answer is, yes, it was all taken very seriously. It was evaluated, and there's nothing that a politician wants to do more than please the public, please the people that they serve.

Sometimes, though, what is asked for is outweighed by what we feel are the strict legal criteria on which these maps were drawn.

REP. DOLLAR: Representative Lucas.

REP. LUCAS: Thank you, Mr. Chair. I'd like to make an observation relative to the drawing of the Senate maps that really parallels the concern that I had that maybe we do the maps drawn in the House.

I will call your attention specifically to [11] Senate District 19, which has had a long history of minority voting age population, much less than 50 percent. And at last election, which was won by Dr. Eric Mansfield, it was practically a landslide victory. Then I see that the minority voting age population has been increased beyond the 50 percent. And I don't know if there's a

rationale for that, but I just want to point that out that that has been done.

REP. LEWIS: Mr. Chairman.

REP. DOLLAR: Chairman Lewis.

REP. LEWIS: Just to–just for the sake of the record, I believe the gentleman was actually referring to Senate–to Senate District 21.

REP. LUCAS: Thank you. I stand to be corrected. It was 21. Thank you.

REP. DOLLAR: If I–Representative Hackney, if you'd hold for just a moment. Brad Krehely of the staff, I believe, has the statistics ready that were requested a moment ago. So if staff would like to just read in the statistics and then we'll move.

MR. KREHELY: Sure. Thank you,

Mr. Chairman. With respect to whole counties, the Senate plan has 82 full counties or 18 split [12] counties. The Nesbitt plan had 87 whole counties or 13 splits. With respect to groupings, the Senate plan has 26, and the Nesbitt plan had 28.

REP. DOLLAR: Thank you. Representative

Hackney.

REP. HACKNEY: And do we have the information about split precincts? It's my information it was 257 in the Rucho Senate 2, and in the Nesbitt plan, there were 6.

REP. DOLLAR: Mr. Krehely, if you would respond to that.

MR. KREHELY: That's correct,

Mr. Chairman.

REP. DOLLAR: Thank you. Representative Hackney.

REP. HACKNEY: Speak on the motion.

REP. DOLLAR: The gentleman is recognized.

REP. LEWIS: Mr. Speaker, pardon me, Representative Hackney. Mr. Chair, should I offer the motion?

REP. DOLLAR: Since the minority leader seems ready to speak to the motion, it would do well, probably, to have that motion before us.

Representative–Chairman Lewis is recognized for a motion.

[13] REP. LEWIS: Thank you, Mr. Chairman. I move that Senate Bill 4–excuse me. I move that the Senate committee substitute for Senate Bill 455 be given favorable report.

REP. DOLLAR: You have heard the motion. Further discussion? Further debate? Representative Hackney.

REP. HACKNEY: Representative Lewis, every time you stood up there, you made a motion, so I just assumed you had already done it.

Members of the committee, this Senate plan entitled Rucho Senate 2 has every bit of the flawed situation that the House map had that we criticized in this committee that we prepared a plan that was most superior. The same thing has happened in the Senate.

The–what the Senate plan does is actually ignore public input to greatly increase African-American voting participation for truly partisan purposes. In doing that, they create a nightmare for election officials with 257 split precincts.

In doing so, they ignore the plain language of the Stephenson decision to, number one, harmonize Voting Rights districts with the whole [14] county provision and; number two, split the fewest number of counties and have a maximum number of whole counties possible.

There is another Senate map which is superior in all respects and which beyond that has the support of the African-American members of the state Senate and of the African-American leaders across the state as reflected in the public hearings.

The–this plan uses race as its predominant mode drawing district boundaries that separate blacks from whites on a block-by-block basis. This is simply redistricting segregation. It destroys communities of interest across the state or divides them so that they are not together. It's drawn to be politically noncompetitive. And as I said previously, while soliciting a lot of public input, the Senate committee that put this together simply ignored it. I urge all members to vote against the motion.

REP. DOLLAR: Further discussion? Further debate? Chairman Lewis.

REP. LEWIS: Thank you, Mr. Chairman, I just wish to respectfully disagree with the gentleman from Orange. I move that the map that is before you and the motion to approve the map was drawn to follow [15] the law. It was also drawn to create districts which are fair and adequately reflect the needs of the people of North Carolina.

REP. DOLLAR: Further discussion? Further debate? Representative Jackson.

REP. JACKSON: Thank you, Mr. Chairman. I just wanted to follow up on Speaker Hackney's points in regards to communities of interest. And I know everybody is tired of hearing about East Wake County, but I'm going to say it again, because it truly is a community of interest.

The Senate maps splits it in even uglier ways than the House map did. Now, in addition to three representatives, now Knightdale will have two senators. I know some of you think that's a positive thing, but I'll tell that a small town is going to have to go to five different members now to get something that should be a local–a local bill introduced and passed. And it's going to make it much more difficult. It's not what they wanted.

The House and the Senate could have worked together to at least unify these communities, and one of their plans, in Southern Pines, to go out of their way to destroy it, and from what I can tell is no good reason because I demonstrated to the committee [16] that you can put the communities back together and not change the partisan makeup, not even a full percentage.

So there is no good reason. I've heard no good reason. For that, I hope that when the Court reviews this record, that they will look at the communities of interest and understand that that is important and will send this plan back. Thank you.

REP. DOLLAR: Further discussion? Further debate? Hearing none, the motion before you is a favorable report for the Senate committee substitute for Senate Bill 455. All those in favor say aye.

(Voice vote.)

REP. DOLLAR: All those opposed say nay.

(Voice vote.)

REP. DOLLAR: The ayes appear to have it, the ayes have it and the Senate bill will be reported favorably. The Sergeant at Arms will distribute the proposed congressional plan.

Committee will just briefly be at ease while those are being passed out.

REP. RAPP: Mr. Chair.

REP. DOLLAR: Representative Rapp.

REP. RAPP: Thank you, Mr. Chair. I think we all have the Rucho-Lewis Congress 2A in our book. [17] Is this different than –

REP. DOLLAR: This should be–what is being passed out should be the proposed committee substitute, and we'll deal with that just in a moment.

Representative West moves that the proposed committee substitute for Senate Bill 453 be before us for discussion purposes without objection. The PCS is before us and that is what is being passed out by the Sergeant at Arms.

REP. DOLLAR: Chairman Lewis, I believe everyone has the PCS in their hands. Chairman Lewis is recognized to explain the proposed committee substitute. Thank you.

REP. LEWIS: Thank you, Mr. Chairman, and ladies and gentlemen. Again, earlier this week, I explained or went through the rationale for how the maps were drawn in a prepared statement to a joint committee of the House and Senate.

In the interest of time, I will not reread that statement but would ask that you refer to it and would

ask that the record reflect that I did read the prepared statement.

I would imagine that the first order of business in– in discussing Rucho-Lewis 3 would be [18] to look at ways, what are the differences between Rucho-Lewis 3 and Rucho-Lewis 2A.

With that, I've asked staff to help me through use of technology–will show these slides for the record.

REP. DOLLAR: And I think we can dim the lights as well for this portion of it. Thank you.

REP. LEWIS: The first slide that we're going to show shows Rucho-Lewis 3, and–and if you'll notice, this first slide shows changes that were made between Districts 1 and 3. The coloration that you see, the blue, green coloration represents the Congressional map, Rucho-Lewis 3. And the pink line that you see represents Rucho-Lewis 2A.

I think that you'll find the biggest change here, the precinct of Snow Hill 1 was added to the furthest. And there was a precinct–there was a–excuse me, Snow Hill 1 was added to the 1st, and then to balance population, there was a precinct in Pitt County which was removed from the 1st. Did I say that correctly?

I think if you'll review your staff packs, you'll notice no substantial change to the partisan makeup or to the–any of the other demographic groups, which are tracked by these reports.

[19] Mr. Chairman, I think it might be best to go ahead and go over the other change and then to perhaps yield at that time.

REP. DOLLAR: That's how we will proceed.

REP. LEWIS: Ladies and gentlemen, this change affects Congressional Districts 10 and 11. The blue represents Congressional District 10. The green represents Congressional District 11. You will notice again the pink line.

Basically, what this is, is merely a boundary change that, again, does not affect the partisan makeup, nor significantly affect any of the demographic makeup of the district.

With that, those are the only substantive changes to this map and the map that you have seen. I would like to place into the record that this map was placed on line at the General Assembly website at 8:05 last night, and we have made every effort to now have all the information that you need regarding these two– these two changes in the bill.

REP. DOLLAR: Representative Rapp.

REP. RAPP: Thank you, Mr. Chair. And Representative Lewis, would you start with the two precincts that were changed in District 1 by adding Snow Hill? What was the rationale for adding one and [20] taking away from another? What changed and what caused that change?

REP. LEWIS: Representative Rapp, the change was made at the request of a current and a former member of this body, and the chairs agreed with the change. And so it was made on the PCS that you have before you.

REP. RAPP: Follow up.

REP. DOLLAR: Follow up.

REP. RAPP: May I ask the reason for the change?

REP. LEWIS: Representative Rapp, respectfully, I think I just told you that.

REP. RAPP: Follow up.

REP. DOLLAR: Follow up.

REP. RAPP: I guess then my question would be, what was the rationale for the member and former member's request for the change?

REP. LEWIS: Representative Rapp, I really am not able to speak with all certainty of that. I believe it was just to keep all of the Snow Hill–for all of the Snow Hill precincts in the 1st.

REP. RAPP: Follow up.

REP. DOLLAR: Follow up.

REP. RAPP: This is now taking west, if I {21} may, to the 10th and 11th District and noting that probably one of the larger turnouts, or if not the largest turnout in our public hearings was in

Asheville and just to discuss the proposed inclusion of a good portion of Buncombe County, significantly Asheville, in the 10th District making, as some people noted in there, they don't feel like they're a Piedmont city, they feel as if they're a mountain city.

And after the hearings, and now with this revised map, I see that even more of Buncombe County, a mountain county, has been put into the 10th. What I would like to know is what is the rationale behind even expanding the Buncombe County's larger portion of that into the 10th Congressional District?

REP. LEWIS: Well, Mr. Chairman,

Representative Rapp, thank you for that question.

First of all, as you know, these plans are a–are drawn at zero–zero deviation. There are no more people in the 10th in this version than there were in Rucho-Lewis 2A. The exact same number of people were in the 10th and 11th under this draw.

REP. DOLLAR: Follow-up?

REP. RAPP: Follow-up. In both the original and the current map, I think what you heard [22] overwhelmingly and what I heard sitting in the audience was a great deal of discussion about community of interest in terms of the mountains versus the Piedmont. And the folks in Buncombe County, both Republicans and Democrats, seem to be, and unaffiliated, seem to be overwhelming in their opposition to being included in the 10th District. How was that factored into the decision-making of the current map?

REP. LEWIS: Thank you for that question, Representative Rapp. The answer to that is that the public comment was reviewed and understood by the chairs, but as you so very well pointed out the last time we met, there are other criteria that can be considered when you draw a map. Obviously, as I've stated before, the one person, one vote rule must be applied. The Voting Rights Act must be applied. After that, there are other factors that you can consider.

It was the belief of the chairs that each major metropolitan area would benefit in being represented in Congress by more than one member of the House. Asheville was treated exactly as every other major metropolitan area.

In Rucho-Lewis 1, we were not able to [23] afford the same benefit of having more than one member of Congress to the City of Wilmington. We have now been

able to afford them that same level of representation in these subsequent maps.

So to repeat the rationale in this that we believed it was important for the citizens of Buncombe County and the residents of Asheville to be–to have two voices in the U.S. Congress, just as every other major metropolitan area has.

REP. RAPP: Follow up?

REP. DOLLAR: Follow up.

REP. RAPP: Well, I'm glad you did address the communities of interest because we have had a great deal of discussion on that. And so I would ask in–as you look at Asheville, I guess you could make that a general question with many of the other communities as well, is how is community of interest defined in crafting the 10th and 11th?

REP. LEWIS: Representative Rapp, thank you very much for that question. As I recall, you and I discussed that at some length last time this committee met. And while you were able to accurately point out that other states have actually codified what communities of interest are, what they mean, and while you didn't say it, I would assume they ranked [24] how they should be applied, no such law exists in North Carolina. So not only is communities of interest very low in the order of hierarchy of considerations to be used, but it's not very well defined.

And you get to–when you're trying to deal with something that's not very well defined by law, then it's not something that we knew how to apply uniformly. The one thing that we did apply uniformly is that Buncombe County and the City of Asheville now will

have two members of Congress, just as all the other major metropolitan areas do.

REP. RAPP: One follow up, please.

REP. DOLLAR: Follow up.

REP. RAPP: Thank you, Representative Lewis. And, you know, you restated what you did say when we talked about the House districts and, again, in the Senate districts, and I really wish there could be a uniform hierarchy in terms of our definition of communities of interest because it is clear to me that both in terms of geography, basic geography, and the basic history of Buncombe County, that it is clearly not defined as an extension of the Piedmont communities. It is very much a mountain community.

[25] It is a crossroads community of Western North Carolina. Its very physical location in the mountains is a part of it. It is the communication center for Western North Carolina. So to be lumped in with our dear friends and neighbors to the–in the Piedmont is certainly questionable.

So I just bring that to your attention. But, again, it gets back to the issue of communities of interest, how we define those. And in terms of Asheville, they do not fit these categories, any of them.

REP. DOLLAR: Representative Hackney.

REP. HACKNEY: I'd like to speak about the map. Mr. Chairman and members, there are many, many problems with Rucho-Lewis 3. Of course, there are only minor differences from number 2.

Let me detail some of them, which have also been detailed in the Senate committee and on the Senate floor, and we'll elaborate more on the House floor, if it gets there.

First of all, the committee held public hearings but did not listen to anything that was said in the public hearings that I can tell that is of great significance to the map. Certainly, did not listen to the African-American communities from [26] across the state in the legislative committees. They have not listened to the African-American legislators. With respect to the 1st District and the 12th District, there was no request to pack black voters into the 1st and the 12th District and the 4th District as well. There was no request to do that.

As Representative Michaux said on the–about the House map the other day, same thing applies to this Congressional map. It was unsolicited, unneeded and unwanted. So it was done for some other purpose other than following the public–message from the public hearing.

What you've done is pack as many African-Americans as possible into majority/minority districts and into the 4th District. It's my understanding that something on the order of 49 or 50 percent of the African-Americans in the state have been put into these three segregated districts. And again, against the advice, against the suggestion of the African-American community.

There is no testimony supporting your 50 percent rule. The testimony is against your 50 percent rule. And you have ignored that testimony. With respect to the two African-American [27] Congressmen that we do have, they both oppose your plan and have told you why and have repeatedly, on the part of Congressman Butterfield, told you they didn't want–he didn't ask for Durham or Wake to be included, now Durham, in this particular iteration, to be in this district as opposed to areas in the east. So you did not follow the suggestion

or the lead of the African-American members of Congress.

Next, you seem to have used race in drawing these districts, including the 4th District as Senator Blue has detailed on the Senate floor. You simply picked out every black voter you could find in Wake County and to pull them out to put them in the 4th District to avoid putting them in the 13th or the 2nd. So that we believe is–runs afoul of the decisions of the United States Supreme Court as well.

Representative Rapp has talked about communities of interest. Let me talk about the 4th District a little bit with respect to communities of interest. It is certainly arguable that Shaw against Reno applies to this particular 4th District, which goes through Alamance, Orange, Durham, Wake, Chatham.

It's my understanding that the [28] Chatham/ Harnett border of the district skips a water course onto an island and then skips from that island back to the mainland, and that that's the point of contiguity at Chatham and Harnett.

Durham is, under this, put into four Congressional districts. The–including the 4th, a previously very compact 4th District, has been split up and decimated in ways that shortchange the voters. It does not make any sense other than for reasons of pulling out black voters to go into Harnett or

Cumberland or the parts of Chatham that you have selected. So it is a racially motivated choice.

The shape of the, Harnett County, part of it, is interesting because it–rather than going down any side of the county, it isolates the center of the county from the east and the western part of the county.

Representative Ellmers lives on the eastern side, apparently, and is–the other side, has to drive across the Price district to get there.

In Cumberland County, which is now in three Congressional districts under this provision, you have isolated Fort Bragg from the rest of

Cumberland County. Fort Bragg is up in the 2nd District near the Harnett County line and is not clear to me what either Harnett or Cumberland [29] 4th District voters have in common with the northern Chatham, southern Orange and southern and western Durham voters that you have placed in your version in the 4th District.

Members, this is a terrible, terrible job of drawing a 4th District. It could hardly be worse. I have referred to it as Italy, and I'm going to -as long as it's in the shape of Italy, I'm going to continue to refer to it that way. You have

Representative Price's home is up in Milan. You have Chatham County is Tuscany, I guess. And Cumberland is down in the boot in Sicily, and I can't remember where Harnett is in between Sicily and Tuscany. I guess Rome is in Harnett somewhere.

This is terrible. This is simply terrible. We ought not be passing a map like this.

REP. DOLLAR: Representative Hackney, I would observe that, at least I've been told that Italy is a rather beautiful country. Representative Lewis.

REP. LEWIS: Thank you, Mr. Chairman. With all due respect to the gentleman from Orange, we absolutely in no way in this map have packed blacks. We have continually asked for some legal citation to

define how blacks have been packed in these [30] districts. None have accurately been provided.

The 1st Congressional District is the only district that was drawn with race as a consideration, as is required by the Voting Rights Act.

The 12th remains largely unchanged except for adjustments due to population, as is required by law. The 12, it's my understanding, in one drawing or another has largely been the same for the past 20 years. We chose to leave it the same in hopes of expediting the preclearance of these maps.

As to the 4th, the 4th is indeed a strong–a strong Democratic district. I won't try to address all of the points from the gentleman because I'm not as eloquent a speaker as he. I would only point out, once I began–once I began taking notes, that the current Congressional map, which the gentleman did support regarding Chatham County, is already divided into two Congressional districts. One of them is the 4th and one of them is the 2nd. It remains so in this drawing as well.

As far as Cumberland County goes, in the current Congressional map, which is found on the NCGOP website and also on many of the walls in this building, which was named Congress Zero Deviation and passed by the General Assembly in 2003 and precleared [31] by the Department of Justice, Cumberland County was also divided three ways with Fort Bragg being in a different district, the 2nd, and the rest of the changes.

As to Wake and, again, I'm sorry I did not take notes on all of the gentleman's comments, but Wake, under the current plan, is served by three members of

Congress. Under the plan that we submit, it will continue to be served by three members.

So I would just reiterate that this map is drawn in compliance with all federal and state laws and is a fair map, and I hope that we will approve it.

REP. DOLLAR: Representative Moffitt is so recognized to send forth an amendment. The amendment has been distributed, I believe. Is that correct?

REP. MOFFITT: No, Mr. Chair, it has not.

REP. HACKNEY: Mr. Chair, can I ask a question while that's being done?

REP. DOLLAR: Representative Hackney is recognized for a question.

REP. HACKNEY: Representative Lewis, you mentioned Chatham and Harnett and Cumberland, the ways they were split in the previous map. Do you happen to know in the previous map whether in Chatham [32] County, Harnett County and Lee County in the previous map, the division went down the center of the county so that in each case they were parts of the other district in the–all the way on the opposite side of the county with a strip down the middle in the plan?

REP. LEWIS: I do not believe,

Representative Hackney, that when this map was drawn and approved by the General Assembly and cleared by the Department of Justice that it was in the configuration that was chosen to use in Rucho-Lewis 3.

REP. HACKNEY: And second question?

REP. DOLLAR: One follow-up.

REP. HACKNEY: I wonder with respect to Harnett County, whether you're on the Bay of Naples side or the Adriatic side in Harnett County, do you know, if you're not right on the Bay of Naples, or it's very pretty as Representative Dollar has said.

REP. LEWIS: Representative Hackney, as a former and a current legislator, I've never been able to afford to travel to the country of Italy. I've always wanted to go. I was proud, though, when you identified it as Rome. As they say, all roads lead to Rome.

[33] REP. DOLLAR: Representative Moffitt is recognized to present his amendment.

REP. MOFFITT: Thank you, Mr. Chair.

Members of the committee, what you have before you is an amendment that will return Buncombe County back to the 11th District. Does everybody have a copy of that?

Essentially, what we've done, and I'd like to commend staff's work on this. Believe me, I would be a lost ball in tall weeds if it wasn't for their able assistance and direction, and I really think that they deserve a lot of our gratitude.

But in the construct of this map, it looks very close to the districts that we currently run in. The changes that I am offering up for consideration are returning Buncombe and Polk back to the 11th in exchange for Burke and Caldwell to the 10th, and we are, because of the zero deviation requirements, taking more of Rutherford County into the 11th.

For, you know, just a couple of things to bring to the body's attention because all of my life, I have heard that Buncombe County, and for that matter, all of Western North Carolina has always sought attention

and recognition from the folks in Raleigh. And we've often felt that the folks down [34] here thought that North Carolina went all the way to 77 and nothing extended past 77.

Well, in this particular case, I would like you to think along those lines and allow us in the mountains to determine what we feel is going to work best for us, and I believe this amendment accomplishes that. I've talked to a lot of folks in our community. They are quite interested in seeing this change take place. And it would be a preference that, you know, in this one instance, that Buncombe County and Western North Carolina be allowed to remain in the 11th district.

REP. DOLLAR: Representative Fisher.

REP. FISHER: Thank you, Mr. Chairman. Members of the committee, I have–would like to speak in support of this amendment. I think this is one instance, if any were to ever occur, that we could have some bipartisan agreement on a change that should be made to these maps.

I'm looking at the transcript from the public hearings that I attended, and to–almost to a person. And I'm not talking about just Democrats. There were Democrats, Republicans, retired people, young people, old people from all walks of life and from all political persuasions who talked about the [35] fact that Asheville is the historic center of the mountain counties. One retiree spoke of the difficulty that he would have as an elderly person in traveling over three counties to get to the offices of his new Congressional Representative should the current maps pass.

I think that it–that the maps as they currently look do not do justice to the communities of interest in the mountain counties. I believe that it presents

particular hardship on older people to participate in the civic activities and community of their region, a region that has been historically a mountain region.

We had one gentleman during the public hearings from Hickory talk about how wrong this was to remove Asheville from the place that it has been historically over decades. And, you know, in spite of all of the things that I disagree with about these maps as they currently look, this is one area where I think that we could show some bipartisan support for a change that has been overwhelmingly requested by the people in Western North Carolina, not just in Asheville, but across all of the western part of the state.

As Representative Moffitt said, Asheville [36] feels like sometimes the red-headed stepchild of the state. We don't get the attention that we feel like we deserve. They send people down here because they think that they're going to have a better conduit to what's going on in the General Assembly than they have currently enjoyed, and I think this is one way to show them that, yes, they do have a voice and, actually, it does go all the way to Raleigh.

So I would ask for your support for this amendment. Thank you.

REP. DOLLAR: Representative Rapp.

REP. RAPP: Thank you, Mr. Chair. And let me salute Representative Moffitt for introducing this amendment because I think it is important to know he's from Buncombe County, but it is important to all of us from Western North Carolina. It is how we define the community that is really at the crossroads of our region, the crossroads of 1-26 and 1-40. It is the crossroads when it comes to communications.

Most of our–the only daily paper that we have in Western North Carolina is the Asheville Citizen coming to all of us. It is a place where we have a single TV station that basically serves all of Western North Carolina. It is the hub of our region and, therefore, it is terribly important when we [37] define, back to our word, communities of interest. Communities of interest, this is central to Western North Carolina.

The districts that I represent, the proposed map and the current maps, really are wraparound on the counties to Buncombe County. And while we may tease sometimes about big bad Buncombe and how it dominates the region, the fact of the matter is, we all know in our hearts and minds, it is central to our being, central hub that I've described below or above in some of my comments.

So I would hope that we could, since this is a bipartisan–has bipartisan support, had overwhelming support, as you heard from the people who showed up at the public hearings, I would hope that we could honor this request because this map does–one of the most important things that Representative Lewis has talked about, which is making sure there's zero deviation in the maps, it accomplishes that as well, and it would certainly be greeted warmly by Republicans, Democrats, unaffiliated voters in Western North Carolina.

REP. DOLLAR: Chairman Lewis.

REP. LEWIS: Thank you, Mr. Chairman, and thank you, Representative Moffitt, for sending this [38] forward. I must admit that it is difficult to oppose something that you send for consideration. However, I reiterate my earlier statement, which is that we felt that the people of Buncombe County and the people of

Asheville should be treated as all the other citizens who reside in major metropolitan areas and have the voices of two members of Congress to speak for them and to represent their interests.

On those grounds, I oppose Representative Moffitt's amendment and request that the committee vote no.

REP. DOLLAR: Further questions? Further discussion? Further debate?

REP. FISHER: Mr. Chairman.

REP. DOLLAR: Representative Fisher.

REP. FISHER: I would like to call for the ayes and nos on this particular vote, please.

REP. DOLLAR: The ayes and nos having been called for, further discussion, further debate? If not, the Clerk will call the roll, and this is on the adoption of the Moffitt amendment to Senate Bill 453. Clerk will call the roll.

THE CLERK: Alexander?

REP. K. ALEXANDER: Aye.

THE CLERK: Alexander votes aye.

[39] Bell?

REP. BELL: Aye.

THE CLERK: Bell votes aye.

Boles?

REP. BOLES: No.

THE CLERK: Boles votes no.

Brown?

REP. BROWN: No.

THE CLERK: Brown votes no.

Bryant?

REP. BRYANT: Aye.

THE CLERK: Bryant votes aye.

Burr?

REP. BURR: No.

THE CLERK: Burr votes no.

Cook?

REP. COOK: No.

THE CLERK: Cook votes no.

Cotham? Cotham?

Crawford? Crawford?

Daughtry?

REP. DAUGHTRY: No.

THE CLERK: Daughtry votes no.

Dockham?

REP. DOCKHAM: No.

[40] THE CLERK: Dockham votes no.

Dollar?

REP. DOLLAR: No.

THE CLERK: Dollar votes no.

Earle? Earle?

Faircloth?

REP. FAIRCLOTH: No.

THE CLERK: Faircloth votes no.

Farmer-Butterfield?

REP. FARMER-BUTTERFIELD: Aye.

THE CLERK: Farmer-Butterfield votes aye.

Fisher?

REP. FISHER: Aye.

THE CLERK: Fisher votes aye.

Floyd?

REP. FLOYD: Aye.

THE CLERK: Floyd votes aye.

Gill?

REP. GILL: Aye.

THE CLERK: Gill votes aye.

Hackney?

REP. HACKNEY: Aye.

THE CLERK: Hackney votes aye.

Howard?

REP. HOWARD: No.

[41] THE CLERK: Howard votes no.

Ingle?

REP. INGLE: No.

THE CLERK: Ingle votes no.

Jackson?

REP. JACKSON: Aye.

THE CLERK: Jackson votes aye.

Jones?

REP. JONES: No.

THE CLERK: Jones votes no.

Langdon?

REP. LANGDON: No.

THE CLERK: Langdon votes no.

Lewis?

REP. LEWIS: No.

THE CLERK: Lewis votes no.

Lucas?

REP. LUCAS: Aye.

THE CLERK: Lucas votes yes.

McComas?

REP. MCCOMAS: No.

THE CLERK: McComas votes no.

McGee?

REP. MCGEE: No.

THE CLERK: McGee votes no.

[42] Mobley?

REP. MOBLEY: Aye.

THE CLERK: Mobley votes aye.

Moffitt?

REP. MOFFITT: Aye.

THE CLERK: Moffitt votes aye.

Moore?

REP. MOORE: No.

THE CLERK: Moore votes no.

Parmon?

REP. PARMON: Aye.

THE CLERK: Parmon votes aye.

Pierce?

REP. PIERCE: Aye.

THE CLERK: Pierce votes aye.

Randleman?

REP. RANDLEMAN: No.

THE CLERK: Randleman votes no.

Rapp?

REP. RAPP: Aye.

THE CLERK: Rapp votes aye.

Rhyne?

REP. RHYNE: No.

THE CLERK: Rhyne votes no.

Samuelson?

[43] REP. SAMUELSON: No.

THE CLERK: Samuelson votes no.

Sanderson?

REP. SANDERSON: No.

THE CLERK: Sanderson votes no.

Spear?

REP. SPEAR: Aye.

THE CLERK: Spear votes aye.

Stam?

REP. STAM: No.

THE CLERK: Stara votes no.

Stevens?

REP. STEVENS: No.

THE CLERK: Stevens votes no.

West?

REP. WEST: No.

THE CLERK: West votes no.

Wilkins?

REP. WILKINS: Aye.

THE CLERK: Wilkins votes aye.

REP. DOLLAR: The ayes are 17. The nos are 23, and the amendment is not agreed to.

Representative Floyd.

REP. FLOYD: Question for the chair, please.

[44] REP. DOLLAR: State your question.

REP. FLOYD: There was a motion called for promptly, sir?

REP. DOLLAR: Yes, there is a motion pending on the floor. Further discussion? Further debate? Representative Wilkins.

REP. WILKINS: Thank you, Mr. Chair. Going back to Lewis-Rucho Congress 3 and the remarks that the Senior Chair made about the Snow Hill area. Representative Lewis, I believe that you said that a current member and a former member made that

request. Is that a current member of–a sitting member of this House?

REP. LEWIS: No, sir.

REP. WILKINS: Beg pardon?

REP. LEWIS: No, sir.

REP. WILKINS: Is that a sitting member of the North Carolina Senate?

REP. LEWIS: Yes, sir.

REP. WILKINS: I'm sorry?

REP. LEWIS: Yes, sir.

REP. WILKINS: Thank you. May I continue, Mr. Chair?

REP. DOLLAR: Follow up.

REP. WILKINS: Thank you. And I think you [45] also said the request came from a former member. Was that a former member of this House?

REP. LEWIS: No, sir.

REP. WILKINS: Was that a former member of the North Carolina Senate?

REP. LEWIS: Yes, sir.

REP. WILKINS: Thank you. May I continue, Mr. Chair? May I continue?

REP. DOLLAR: Follow up.

REP. WILKINS: Thank you. I would just know that Representative Darren Jackson is a sitting member of this House and a sitting member of this committee, and I believe he has tried on several occasions to have Knightdale made whole in the House map, just as

Snow Hill has been made whole in this Congressional map.

And I'm caused to wonder, and if you would address it, please, Senior Chair, why Snow Hill seems to be important and Knightdale not important?

REP. LEWIS: Thank you. Thank you for the question, Representative Wilkins.

Let me start at the end of your question, and in no way have I ever said that Knightdale was not important. In no way have I said that Snow Hill was more important. So if your question is why were |46| changes not made to the House map at the request of Representative Jackson, I think that I on the floor Monday thanked Representative Jackson for the professional way that he sought the change in actually submitting input for review but that I did not see that the change that he had asked for could–would improve upon the map. And as such, I do not support the change that he sought in the North Carolina House map.

REP. WILKINS: Follow-up.

REP. DOLLAR: Follow-up?

REP. WILKINS: Yes, sir. So

Representative Lewis, can you tell me that the same principles were applied by the chairs and consultants as they made those decisions about Snow Hill versus Knightdale?

REP. LEWIS: Representative Rapp, thank you for the question. I don't think it is a relevant comparison to compare the discussion on the North Carolina House map to the comparison on the Congressional map.

REP. WILKINS: May I please follow up?

REP. DOLLAR: More follow-up.

REP. WILKINS: I promise this will be the last one.

[47] REP. DOLLAR: Gentleman is recognized.

REP. WILKINS: Thank you, Mr. Chair. Representative Lewis, I was trying to get to the principles involved here. You have reiterated time and again that certain principles applied across the board no matter what the map was. I am going to ask you one more time if the same principles were applied.

REP. LEWIS: Yes, sir.

REP. DOLLAR: Representative Floyd, the–in further answer of your question a moment–inquiry a moment ago, the chair stands corrected. We did bring the PCS properly before the body for discussion, but the motion for favorable report has not been put forward yet. And I would, in the interest of moving forward on that, I would recognize Chairman Lewis for a motion.

REP. LEWIS: Thank you, Mr. Chairman. I move that the House proposed committee substitute for Senate Bill 453 be given a favorable report unfavorable to the original bill.

REP. DOLLAR: We have a further motion on the floor. Further discussion? Further debate? Representative Hackney.

REP. HACKNEY: I will repeat my earlier [48] statement. I urge everyone to vote no on this motion.

REP. DOLLAR: Representative Bryant.

REP. BRYANT: Thank you, Mr. Chair. I had my hand up previously for a question.

Could the co-sponsor and committees and Senior Chair clarify for us where the double-bunking is for the incumbents in this map, and if there are open districts, which ones they are? Sometimes it's hard for me to get these dots straight, given the way the map– they appear on the map.

REP. LEWIS: Yes, Representative Bryant, with the caveat, Mr. Chairman, if I misspeak, if staff could correct me, I believe that of the current incumbents, the ones that are paired would include Representative Price and Representative Miller. And the district number is 4.

And the other pairing is Representative Kissell and Representative McIntyre. District number is 8. And to my knowledge, the only open district is District 7. But, Mr. Chairman, I yield to staff if I misspoke.

REP. DOLLAR: I believe that's correct, and also just a further notation, for the member, as you know, for United States Congress, as long as you [49] reside in the state in which the Congressional election is being held, you can run for whichever district one should so choose. Representative

Bryant, follow up?

REP. BRYANT: Follow up. Is there an incumbent in 13 under Congress–

REP. LEWIS: Excuse me, Representative Bryant. I was just advised by staff that I did misspeak, and for that I apologize. There is no incumbent currently in District 13.

REP. BRYANT: Follow up.

REP. DOLLAR: Follow up.

REP. BRYANT: I'm aware that in the previous maps before the change to the 1st District, there was no double-bunking, I believe, of the incumbent Congresspersons. Can you explain how come we double-bunked, or you made changes such that you required double-bunking of the Congress, incumbent Congresspersons?

REP. LEWIS: Representative Bryant, thank you for that question. The changes that were made to the 1st necessitated a shift in the map and the shift in the map merely created a situation where four incumbent members were put into the new–were put into two of these new districts.

[50] REP. BRYANT: One more follow-up.

REP. DOLLAR: Follow-up.

REP. BRYANT: Okay. Mr. Chair, did you all consider options to make the changes you needed to make to meet the VRA and the one person, one vote zero deviation requirements that would avoid double-bunking of these incumbents?

REP. LEWIS: Representative Bryant, thank you for that question. And actually, that gives me a chance to go back to an earlier comment that was made regarding the relevance of the public hearing process.

Actually, the 1st District, as you see it drawn, is a result largely of input that was received at the public hearing from a speaker in Asheville. And so I did want to get that on the record.

As to the second part of your question, I don't recall that we looked at the residences of the incumbents until we had drawn the map.

REP. BRYANT: Thank you.

REP. DOLLAR: Further discussion? Further debate? Representative Rapp.

REP. RAPP: Thank you, Mr. Chair. Very briefly, you've heard my concerns and expressed particularly as they relate to the communities of [51] interest. But I think there is something about the public hearing process that needs to be addressed because I think there's some of us that went to the public hearings very cheered by the idea that there would be this transparency that would get us open discussion. But what we've seen is these maps, and particularly as we're looking now at the

Congressional maps really having ignored the kind of public input that we've had on it.

Now, with due respect, my friends in Asheville and particularly one person who's commenting on the District 1 in the eastern part of the state, that's fine, allow that one person's comment. But to ignore then about 100 to 120 other people who were expressing their concerns about their particular region, meaning where Asheville is being put in Districts 10 and 11.

And, again, this is just an example. To ignore that overwhelming testimony and to pick out one person to illustrate how you listen to folks across the state I think is not appropriate.

But having said that, I guess as we get concerned about people getting jaundiced about the political process, this is in part the reason. We–a number of us on this committee helped to get people [52] out, encouraged people in newsletters in different ways to please show up, express your views, whatever those views are. And I was particularly encouraged in Western North Carolina and Asheville and out in

Cullowhee, in particular, that they had large turnouts for these.

But I think what happens is, we go now and say, thank you for coming out, but we didn't listen to you. And I think that's, that's flawed. That's wrong. And it adds to just a political jaundice about the process, and I think we've made it worse. And I just felt compelled to say that. Thank you.

REP. DOLLAR: Chairman Lewis.

REP. LEWIS: Thank you, Mr. Chairman. In response to the gentleman's comments, let me be absolutely clear that the comments from the public were absolutely not ignored. They were heard or read and processed. In the end, though, the–some of the accommodations that the public asked for couldn't be made by law. Some were chosen not to be made in an effort to be consistent in the way this map was drawn.

To use the gentleman's example, I'll state again that the county of Buncombe contains a major municipal area in the state. It is a beautiful place [53] to live. And the chairs who drew this map felt that it was entitled to the same courtesy they extended to the other municipalities, the other large municipalities in this state by affording it two members of Congress.

REP. DOLLAR: Further discussion? Further debate?

If not, the motion before the committee is a favorable report for the House committee substitute for Senate Bill 453. All those in favor say aye.

(Voice vote.)

REP. DOLLAR: Opposed say nay.

(Voice vote.)

REP. DOLLAR: The ayes appear to have it. The ayes have it. And the favorable report for Senate Bill–the House committee substitute for Senate Bill 453 will be reported to the floor, and the Committee is adjourned.

(THE REDISTRICTING COMMITTEE WAS ADJOURNED AT 11:26 A.M.)

[54] STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CERTIFICATE

I, Karen K. Kidwell, RMR, CRR, court reporter and Notary Public, do hereby certify that the foregoing pages are a true, accurate, and complete record of the proceedings and that it has been transcribed to the best of my ability and understanding; I further affirm that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action.

IN WITNESS WHEREOF, I have hereto set my hand, this the 30th day of July, 2011.

_____

Karen K. Kidwell, RMR, CRR